



The Senate Guide to Ethics and Financial Disclosure

February 2009



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**Prepared by the
Senate Research Center**

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Statements and interpretations of the law presented herein are not intended to substitute for the opinions of legal counsel or to serve as formal legal advice.

If the reader identifies questions concerning the application of the law described in this book to personal fact situations, he or she is advised to contact the Texas Ethics Commission (commission), the Office of the Attorney General (OAG), or an attorney.

The commission is authorized to provide informal legal advice or, upon request, to render a formal advisory opinion pertaining to a fact situation presented relative to the statutes within its jurisdiction. The commission may be reached at (512) 463-5800.

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No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business....

This principle must be followed not only in reality, but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

—John F. Kennedy

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INTRODUCTION

Knowledge of the laws which govern ethics and financial disclosure is indispensable to the members and employees of the Senate as a protection against inappropriate conduct and as a guide to better serving the people of Texas. This book, which is an update to the 2007 guide, is written to provide members and employees of the Senate with a general reference guide to these laws.

Legal provisions found in the Election Code, the Government Code, and the Penal Code that refer to ethics or financial disclosure required of a senator or Senate employee are discussed in the three sections of this guide – **Section I: Standards of Conduct**; **Section II: Financial Disclosure**; and **Section III: The Texas Ethics Commission**. In using this manual, please note:

- ❖ Although the provisions discussed in this guide apply to a broader group of persons than Senate members and employees (such as all members and employees of the legislature and some public officials), this guide is tailored toward Senate members and employees.
- ❖ The Texas Ethics Commission (commission) is the entity which regulates ethics and financial disclosure laws.
- ❖ The commission has adopted rules under the Texas Administrative Code (TAC) and issued Ethics Advisory Opinions (EAOs) to interpret the law. Where applicable in this guide, the pertinent statutes, rules, and EAOs are referenced.
- ❖ A summary of each EAO referenced in the guide is contained in the appendix.

Reasonable reliance on written Ethics Advisory Opinions and rules adopted by the Texas Ethics Commission provides an affirmative defense to prosecution or to the imposition of a civil penalty (See § 571.097, Government Code, and EAO-202).

Section I

Standards of Conduct

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GENERAL STANDARDS OF CONDUCT

No member or employee of the Senate should:

- ❖ Accept or solicit anything of value that might reasonably influence the discharge of official duties;
- ❖ Accept other employment or engage in a business or professional activity that would induce or require the disclosure of confidential information acquired in his or her official capacity;
- ❖ Engage in any activity which might impair his or her independence of judgment in the performance of official duties;
- ❖ Make personal investments that could reasonably be expected to create a substantial conflict of interest between his or her public/private interests; or
- ❖ Solicit, accept, or agree to accept intentionally or knowingly any benefit for having exercised his or her official powers or duties in favor of another person or entity.

References: Government Code, § 572.051; Government Code, Chapter 305; Penal Code, Chapters 36 and 39

The supreme quality for leadership is unquestionably integrity. Without it, no real success is possible, no matter whether it is on a section gang, in an army, or in an office.

—Dwight D. Eisenhower

Bribery

A person commits an offense if he or she intentionally or knowingly solicits, accepts, or agrees to accept from another:

- ❖ Any benefit as consideration for a decision, recommendation, opinion, vote, or other exercise of official discretion as a public servant;
- ❖ Any benefit as consideration for a violation of a duty imposed on a public servant; or
- ❖ Any benefit defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, that is a political contribution or a lobby expenditure made and reported correctly, if the benefit is offered, solicited, conferred, accepted, or agreed to, pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.

There are exceptions to the prohibitions cited above; however, even if acceptance of a gift is legally permissible, the recipient should be aware that such actions may raise questions of impropriety or the appearance of impropriety.

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage. The commission has decided that the following items (among others) are benefits and may only be accepted under certain circumstances: a \$60 meal; \$160 rifle; food and beverages delivered in more than small amounts and not infrequently; tickets to intercollegiate athletic events; unlimited free parking at a city airport; unlimited free parking in metered spaces; and unlimited free use of sports facilities (golf or tennis clubs). Flowers delivered to a governmental office may be considered a benefit.

In general, an item worth less than \$50, excluding cash, check, or negotiable instruments, may be accepted, unless it is given in consideration for some official action or inaction.

Benefits in the form of food, lodging, transportation, or entertainment in any amount may be accepted if the benefits are accepted in your capacity as a “guest,” the donor is present, and the benefit is reported. A gift of travel or lodging for a pleasure trip is prohibited, if the person making the gift is a

registered lobbyist. However, such benefits may be accepted from a lobbyist if the trip is a fact-finding trip, a conference, or incidental transportation. Again, the lobbyist must be present and the gift reported.

A benefit may be accepted from a friend, business associate, or relative with whom you have a relationship that is independent of your official status if the benefit is given in light of that independent relationship.

A benefit in the form of a payment for a service or goods rendered under "legitimate consideration" may be accepted. The payment must reflect the actual amount for the goods or services you provide.

An unsolicited benefit or gift that is received by a public servant which the public servant is prohibited from accepting may be donated to a governmental entity authorized to accept such gifts or to certain recognized tax-exempt charitable organizations.

Any gift worth \$250 or more, except for a gift from a member of the member's immediate family or a lobbyist required to report the gift, must be reported on the member's personal financial statement. This includes, for example, gifts given to a senate committee chairperson by members of the committee.

Penalty: Second degree felony

References: Penal Code, §36.01(3), §36.02, §36.08(i), §36.10; Election Code, Title 15; Government Code, Chapter 305

EAO - 12, 30, 31, 36, 60, 61, 62, 63, 64, 66, 69, 71, 75, 87, 88, 90, 94, 97, 100, 118, 120, 123, 130, 139, 148, 155, 178, 186, 192, 205, 228, 235, 252, 254, 268, 287, 294, 325, 327, 355, 359, 363, 366, 416, 421, 425, 427, 428, and 449

The most important tool you have in your arsenal is integrity.

—Zig Zigler

Conflicts of Interest

Soliciting Contracts

A senator may not have either direct or indirect interest in a contract with the state or a county when the contract has been authorized or funded by a legislature of which the senator was a member. Conflict of interest is addressed by common law doctrine. If it is found that the senator has an interest in a contract, it may result in the contract being invalidated.

References: Texas Constitution, Article III, § 18; Attorney General Opinion Nos. JM-671 and JM-782; *Meyers v. Walker*, 276 S.W. 305 (Tx. Civ. App. 1925)
EAO - 156, 201, 205, 228, 263, and 374

Certain Leases Prohibited

Members, or business entities in which they have a substantial interest, may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Texas Supreme Court, the Court of Criminal Appeals, or a state judicial agency. A lease made in violation of this law is void. The prohibition does not apply to persons who are members on June 16, 1989, for as long as they are members.

Reference: Government Code, § 572.057
EAO - 194

Other Employment

Members and employees of the Senate may not accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the official position or accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of their official duties.

A state employee who violates this provision or an ethics policy adopted by his or her employing agency is subject to termination of the employee's state employment or another employment-related sanction. A member or employee who violates these prohibitions is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

Reference: Government Code, § 572.051

EAO - 41, 155, 174, 228, 263, and 358

Voting on Business Measures

A member of the Senate may not vote on a measure directly benefiting a particular business entity, other than a measure that will affect an entire class of business entities, if the member has a controlling interest in that business entity.

A controlling interest is defined as ownership of more than 10 percent interest, membership on the board of directors or other governing body of the business, or serving as an officer of the business.

Penalty: Class A misdemeanor

Reference: Government Code, §572.053

EAO - 174, 201, 228, 263, and 374

Voting on Personal or Private Interests

A senator is required to notify the Senate of any personal or private interest he or she has in any pending measure and may not vote on that measure.

A senator is required to notify the Secretary of the Senate and the commission in writing before introducing, sponsoring, or voting on a measure or bill if the member's spouse or a person related to the member within the first degree by consanguinity is registered as a lobbyist with respect to the subject matter of the measure or bill. This notice must be included in the Senate Journal.

A member of the legislature who violates this section is subject to discipline by the Senate, as provided by Section 11, Article III, Texas Constitution.

Penalty: A member of the legislature who violates this section is subject to discipline by the house to which the member belongs, as provided by Section 11, Article III, Texas Constitution.
References: Texas Constitution, Article III, § 22; Government Code, § 572.0531
EAO - 205 and 263

Misapplication of State Resources

A member or employee may not use government property, services, personnel, or anything of value belonging to the state with the intent to obtain a benefit or with the intent to harm or defraud another. Discounts or awards given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not defined as things of value belonging to the government under the law. However, the law does not prevent a state agency from adopting a policy requiring that such discounts or awards be used for agency purposes.

A public servant is prohibited from using state time or state resources and equipment to work on any political campaign. The use of official authority to interfere with or attempt to influence an election result is prohibited by Section 556.004 of the Government Code. However, the commission has no authority to interpret this provision of the law.

Penalties: Range from a Class C misdemeanor to a first degree felony depending on the value of the use of the thing misused.

References: Penal Code, § 39.02(a)(2) and § 39.02(d); Government Code, Chapter 556.

EAO - 95, 134, 147, 164, 172, 182, 190, 209, 260, 268, 295, 366, 372, 386, 395, and 431

The time is always right to do what is right.
—Martin Luther King, Jr.

Insider Information

A member or employee of the Senate commits an offense if he or she:

- ❖ acquires or aids another in acquiring a pecuniary interest in any property, transaction, or enterprise based on “insider information”;
- ❖ speculates or aids another to speculate on the basis of the information; or
- ❖ with the intent to obtain a benefit or to harm or defraud another, discloses or uses “insider information” for a nongovernmental purpose.

“Insider information” means any information to which the public does not generally have access and that is made confidential by the Public Information Act.

Penalty: Third degree felony

Reference: Penal Code, § 39.06

EAO - 358

Fee for Services

A member or employee of the Senate may earn income, fees, or other payments as a result of performing services connected with his or her non-legislative profession.

Reference: Penal Code, § 36.10(a)(1)

EAO - 41, 83, 123, 148, 155, 178, 192, 283, 294, 358, 374, 408, and 416

Payment for Speaking Engagements

A member or employee of the Senate may not solicit, agree to accept, or accept a payment (honorarium) for speaking or appearing at functions to which he or she would not have been invited if he or she were not a public official. The location of the speech, the nature of the audience, and the source of the speaker’s expertise may be factors to consider in determining whether a payment is a prohibited honorarium.

Transportation, lodging, and meals are not honoraria under the law and may be accepted for a conference or similar event at which the Senate member or employee provides a service, such as a speech. If a member accepts food, transportation, or lodging under these circumstances, it must be reported on the member's personal financial disclosure statement.

Unless authorized by law, an employee may not accept money for a travel expense reimbursement from a person that the employee's employing state agency intends to audit, examine, or investigate or is auditing, examining, or investigating.

Penalty: Class A misdemeanor

References: Penal Code, § 36.07; Government Code, § 660.016

EAO - 17, 18, 19, 54, 57, 97, 125, 150, 173, 273, 294, 305, 312, 370, 416, and 425

Seminar or Symposium Attendance

Generally, a Senate employee, who attends a job-related seminar at the direction of his or her employer, may accept a tuition waiver, food, transportation, and lodging for the seminar to the same extent that the state would pay for such expenses. The commission has ruled that the benefit afforded in this situation is actually a benefit to the state, not the individual; therefore, it is not prohibited.

If the tuition waiver, food, transportation, and lodging for the seminar are provided by a lobbyist to a senator or Senate employee as their "guest," these expenditures must be reported by the lobbyist. In order for a senator or Senate employee to accept something as a guest, the donor must be present.

References: Penal Code, §§ 36.07 and 36.10

EAO - 63 and 287

Representation Before State Agencies

A member may not, for compensation, represent another person before a state executive branch agency unless the proceeding is pursuant to an attorney-client relationship in a criminal law matter or only entails the filing of documents that involve ministerial acts on the part of the state executive branch agency.

An individual who appears before a state agency or contacts an officer or employee of a state agency on behalf of an individual, firm, partnership, corporation, or association about a matter before that agency must register with the agency and provide a statement as to whether the person has received or expects to receive any benefit for the appearance or contact.

Fees earned representing clients before executive state agencies must be reported on the member's annual personal financial disclosure statement. The law requires that the agency, client, and amount earned be reported.

Penalty: Class A misdemeanor

References: Government Code, §§ 572.052 and 2004.005

EAO - 40, 117, 194, 371, and 408

Reimbursement for Travel Expenses and Use of Frequent Flyer Miles

Members and employees of the Senate may not be reimbursed by the state for air transportation expenses exceeding the lowest available fare. An officer or employee of the Senate may be reimbursed with public funds for reasonable and necessary expenses for lodging and meals as determined by guidelines issued by the Secretary of the Senate.

A member or employee may retain for personal use frequent flyer miles, rental car discounts, hotel discounts, or food coupons awarded due to business travel.

References: Government Code, §§ 611.001 and 611.002; Penal Code, § 39.02

EAO - 204, 260, and 269

*Nobody has a more sacred obligation to obey
the law than those who make the law.*

—Sophocles

GENERAL PROHIBITION ON ACCEPTING THINGS OF VALUE

The law establishes a blanket prohibition on the acceptance of anything from persons who must register as lobbyists and from non-lobbyists (e.g., constituents). The law then sets out exceptions to this general prohibition. The exceptions to this general prohibition are different for non-lobbyists and for lobbyists.

The commission has ruled that some items are of such minimal value that they are not benefits and their acceptance poses no problem: for example, a simple plaque, a tee-shirt, a key ring, a cap, a coffee mug, food delivered to an office infrequently and in small quantities, flowers given at a public appearance, and discount coupons to an amusement park that are widely available from the amusement park through other sources.

Penalty: Class A misdemeanor

References: Penal Code, §§ 36.08(f), 36.09, and 36.10

Caveat: Accepting anything (even if it is of minimal value) is illegal if it was accepted by a member or employee of the Senate for performing or failing to perform an official act.

Accepting Things from Non-Lobbyists

A Senate member or employee may accept a thing of value if the item falls within one of the following categories.

The \$50 Rule

A Senate member or employee may accept an item valued at less than \$50 from a non-lobbyist, excluding cash, checks, or negotiable instruments.

Penalty: Class A misdemeanor

References: Penal Code, §§ 36.08 and 36.10(a)(6)

EAO - 187

Independent Relationship

A Senate member or employee may accept anything from someone, if the member or employee's relationship with the person is:

- ❖ One of kinship;
- ❖ A personal, professional, or business relationship independent of one's position as a Senate member or employee. (If the gift-giver is a lobbyist, caution should be used in determining whether a relationship is in fact independent of the member or employee's official status.)

Penalty: Class A misdemeanor

References: Penal Code, §§ 36.08 and 36.10(a)(2)

EAO - 12, 90, 139, and 282

Food, Entertainment, Transportation, and Lodging

Food, entertainment, transportation, and lodging may be accepted by a Senate member or employee if the items are accepted by the member or employee as a guest and are reported properly. The guest requirement is fulfilled if the donor is present.

Penalty: Class A misdemeanor

References: Penal Code, §§ 36.08 and 36.10 (b) and (c)

EAO - 12, 54, 64, 90, 94, 118, 228, 261, 287, and 304

Gifts From Governmental Bodies

A member or employee may accept an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.

For example, a county may provide office space or a city may provide parking to members.

Penalty: Class A misdemeanor

References: Penal Code, § 36.10 (a)(7)

EAO - 186, 187, and 235

Taxes and Court Actions

A member may use political funds for:

- ❖ payments of federal income taxes due on interest and other income on political contributions;
- ❖ defending or prosecuting civil actions or defending criminal actions brought by or against the member as a candidate or officeholder; and
- ❖ participating in actions to determine a candidate's eligibility for office.

Reference: Election Code, § 253.035

EAO - 105, 310, and 433

Purchase and Maintenance of Items

A member may use political funds to purchase and maintain items such as a car, a plane, and a computer, if these items are to be used for campaign or officeholder purposes.

Items purchased with political funds, in whole or in part, may not be converted to personal use. Personal use of a political asset that is timely reported and reasonably reimbursed is not considered conversion to personal use.

Determining the costs attributable to personal use can be difficult. The commission has suggested that an appropriate basis for apportioning costs is a good-faith estimate of the ratio of political to personal use.

Once an accurate ratio of use is available, members must use personal funds for any excess payment made out of political contributions. Conversely, members may reimburse themselves out of political funds for any excess personal payment.

Reference: Election Code, § 253.035

EAO - 116, 129, 237, 241, 248, 269, 296, and 430

Reportable Lobby Expenditures

The lobbyist must report the member's or employee's name and other detailed information if the lobbyist spends:

- ❖ An amount that exceeds 60 percent of the amount of the daily legislative per diem for transportation or lodging a day for food, lodging, or transportation for the Senate employee or member or his or her immediate family;
- ❖ An amount that exceeds 60 percent of the amount of the daily legislative per diem for entertainment for the Senate employee or member or his or her immediate family;
- ❖ More than \$50 for a gift, award, or memento given to the member or employee; or
- ❖ Any money for the member or employee to attend a political fund-raiser or charity event.

Penalty: A registrant violating this section commits a Class A misdemeanor and may be subject to civil penalties and fines.

References: Government Code, § 305.0061

EAO - 46, 59, 67, 81, 87, 93, 113, 119, 136, 162, 252, 259, and 335

Presence Requirement by an Entity Making Lobby Expenditures

An entity may satisfy the presence requirement by the presence of:

- ❖ An individual registrant who represents the entity; or
- ❖ A person whose position, authority, or conduct on behalf of the entity could support an award of exemplary damages against the entity.

References: Government Code, §§ 305.006(f) and 305.024(a)(7); 1 TAC § 34.17

EAO - 34, 92, and 114

Public Access To Reports

Lobby reports are public records and available for public inspection. The commission retains these reports for four years from the date of filing.

Reference: Government Code, § 305.009

Nothing that is morally wrong is politically right.
—William Gladstone

POLITICAL CONTRIBUTIONS

Acceptance of Political Contributions

General Restrictions

State law prohibits or places restrictions on political contributions. The following are among the restrictions or prohibitions:

- ❖ Political contributions from labor organizations and from most corporations are prohibited (Election Code, § 253.091, et seq.; 1 TAC 24);
- ❖ Cash contributions in the form of coins and currency of more than \$100 in the aggregate from one contributor in a reporting period are prohibited (Election Code, § 253.033; 1 TAC § 22.9);
- ❖ Anonymous contributions are prohibited and reports must disclose the actual source of a contribution, not an intermediary (Election Code, § 253.001; 1 TAC § 22.3);
- ❖ Personal use of political contributions is prohibited (Election Code, § 253.035; 1 TAC § 22.17);
- ❖ Political contributions may not be used to pay for personal services rendered by the candidate or officeholder or by the spouse, or dependent children of the candidate or officeholder. There are also restrictions of a candidate's or officeholder's use of political contributions to make payments to a business in which the candidate or officeholder holds a participating interest of more than 10 percent, a position on the governing body of the business, or a position as an officer of the business (Election Code, § 253.041; 1 TAC § 22.23);
- ❖ The use of political contributions to reimburse political expenditures from personal funds is restricted (Election Code, §§ 253.035(h) and 253.0351; 1 TAC §§ 22.19 and 22.21);
- ❖ The amounts for which certain candidates and officeholders may reimburse personal funds from political contributions are capped (Election Code, §§ 253.042 and 253.162; 1 TAC §§ 22.21 and 22.23);
- ❖ Federal law generally prohibits the acceptance of contributions from foreign sources (United States Code, Title 2, § 441(e); 1 TAC § 22.31); and
- ❖ A candidate or officeholder must keep political contributions in one or more accounts that are separate from any other account maintained by

the candidate or officeholder. There is no requirement that campaign contributions be maintained in a separate account from officeholder contributions (Election Code, § 253.040).

In the State Capitol

A member may not accept, and must refuse, a political contribution that is offered by a person within “the Capitol.”

In Section 22.13 of the Texas Administrative Code, the Capitol is defined to include the Capitol Building and the Capitol Extension and any office that is being used as the official Capitol office for a member of the legislature, the governor, the lieutenant governor, or the secretary of state.

This does not prohibit contributions delivered in the Capitol through the United States Postal Service or a common or contract carrier.

Penalty: Class A misdemeanor. Additionally, each opposing candidate may be entitled to damages in the amount of twice the unlawful contribution plus reasonable attorney’s fees, and the state may be entitled to three times the unlawful contribution.

References: Election Code, §§ 253.039, 253.131, and 253.133; 1 TAC § 22.13

During Regular Session

A member may not accept a political contribution offered during the period beginning 30 days prior to the start of a regular session and continuing through the 20th day after the date of final adjournment. A legislative caucus may not accept a contribution from a nonmember during the period beginning 30 days prior to the start of a regular session and continuing through the 20th day after the date of final adjournment.

If a senator accepts an in-kind contribution of office space prior to the moratorium period on contributions, he or she may continue to use the office space during the session.

Contributions that are received and refused must be returned to the contributor not later than the 30th day after the date of receipt. A contribution made by mail is not considered received during the moratorium period if it was placed

with postage prepaid and properly addressed in the United States mail before the beginning of the period. The date indicated by the post office cancellation mark is considered to be the date the contribution was placed in the mail unless proven otherwise.

Section 253.034 of the Election Code provides that the moratorium does not apply to a political contribution that was made and accepted with the intent that it be used in an election held or ordered during the period under certain circumstances; to defray expenses incurred in connection with an election contest; or by a senator if he or she was defeated at the general election held immediately before the session is convened or by a specific-purpose political committee that supports or assists only that senator.

This section of the law does not pertain to candidates who are not officeholders.

Penalty: Class A misdemeanor. Additionally, the violator may be liable for damages to each opposing candidate for twice the amount of the illegal contribution. The state may be entitled to damages equal to triple the amount of the illegal contribution. A person who knowingly makes or accepts a contribution to a legislative caucus in violation of this section is liable for damages to the state in the amount of triple the value of the unlawful contribution.

References: Election Code, §§ 253.034, 253.0341, 253.131, and 253.133; 1 TAC § 22.11

EAO - 239, 329, 346, 354, 355, 357, and 411

During Special Session

A member may accept contributions during a special legislative session. However, contributions accepted during the period beginning with the date of the governor's proclamation through adjournment must be reported to the commission within 30 days after final adjournment.

The period to determine whether to accept or reject a contribution is shortened to the three days following receipt of the contribution.

Penalty: Class A misdemeanor. An officeholder or candidate of a political committee who fails to report a contribution may be liable for damages to each opposing candidate for twice the amount not reported plus reasonable attorney's fees. A candidate or officeholder who violates this section may be liable to the state for damages of three times the unreported amount.

References: Election Code, §§ 254.0391, 254.041, 254.231, and 254.232; 1 TAC §§ 20.225, 20.281, and 20.337

Use of Political Contributions

A member may not use political contributions for personal purposes. Section 253.035, Election Code, states, “Personal use means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of public office.”

The Election Code does provide for some exceptions as noted herein and EAO-458 states that a former state senator who is now a United States ambassador may use political contributions accepted as a Texas candidate or officeholder to purchase furnishings for use in his official residence and to host an evening of holiday entertainment for embassy staff members and their families.

References: Election Code, § 253.035, et seq.; 1 TAC § 22.17

Real Estate Purchases/Certain Rental Payments

A member may not use political contributions to purchase real property or pay interest or principal on a note for the purchase of real property. Payments for property purchased before January 1, 1992, are exempt from this prohibition.

A member may not knowingly make or authorize a payment from a political contribution for the rental of real property from:

- ❖ a person related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the candidate or officeholder; or
- ❖ a business in which the candidate or officeholder or a person related within the second degree by consanguinity or affinity has a participating interest of more than 10 percent, holds a position on the governing body, or serves as an officer.

Penalty: Class A misdemeanor

References: Election Code, §§ 253.038, 253.131, and 253.133; 1 TAC § 22.15
EAO - 146, 248, 319, and 440

Reimbursement for Use of Personal Assets and Out-of-Pocket Expenses

A member may use political contributions to be reimbursed for out-of-pocket expenses if the expenditures are timely reported to the commission and the items are noted as reimbursable on the report.

A member may use political contributions to be reimbursed at a reasonable rate for political use of a personal asset, such as a car or an airplane. The rate of reimbursement for use of a personal vehicle is the IRS standard rate. These reimbursements must be reported as political expenditures from personal funds that are reimbursable.

Reimbursements from political contributions for out-of-pocket expenses, use of personal assets, and most loans from close family members are limited to \$500,000 per election for a candidate for governor and \$250,000 per election for a candidate for other statewide offices.

A member may not use political contributions to pay for personal licensure fees unless the licensure is required for the office being sought.

Penalty: A person who exceeds the reimbursement limits commits a Class A misdemeanor. Additionally, a person may be civilly liable for damages to each opposing candidate in an amount equal to twice the illegally reimbursed amount, and the state may be entitled to three times the unlawful expenditure for reimbursement.

References: Election Code, §§ 253.035(h), 253.042, 253.131, and 253.133; 1 TAC §§ 22.19 and 22.21

EAO - 13, 50, 80, 116, 146, 151, 195, 204, 258, 430, and 432

Character is the only secure foundation of the state.
—Calvin Coolidge

Other Acceptable Uses

Determining what constitutes personal use of political assets is an ongoing question. Some determinations of prohibited and allowable uses of political contributions made by the commission are listed below.

Member's Living Expenses

A member of the Senate, who is not a resident of Travis County, may use political contributions for:

- ❖ rent;
- ❖ utilities;
- ❖ furniture; and
- ❖ other reasonable housing expenses incurred while residing in Travis County.

A member may not use political funds to pay laundry and dry cleaning expenses.

Staff Expenses

A member may use political funds to pay for a staff member, who normally resides in Austin, to lease and furnish a second residence in the member's district, if the legislator has requested the staff spend time in the district during the legislative session to maintain district constituent contact.

A member may use political funds to supplement the salaries of state employees who work for the member.

Educational Expenses

A member may use political funds to pay expenses incurred in connection with a course of study related to the member's duties or activities of office.

Member's Spouse

A member may use political funds to pay for his or her spouse to attend a legislative conference if the spouse attends the conference to participate in the substantive programs offered at the conference in order to assist the legislator in his or her officeholder duties.

A member may not use political funds to pay for his or her spouse to attend:

- ❖ a legislative conference if the spouse attends merely to participate in social activities provided for the spouses of legislators; or
- ❖ the Legislative Ladies' functions.

Penalty: A member who violates this section is civilly liable to the state for an amount equal to the amount illegally converted plus reasonable court costs.

Reference: Election Code, § 253.035

EAO - 25, 50, 68, 76, 78, 104, 111, 116, 129, 146, 149, 151, 157, 169, 190, 191, 204, 224, 237, 244, 248, 249, 254, 296, 310, 313, 319, 347, 356, 359, 363, 375, 378, 405, 407, 423, 430, and 434

Member's Children

A member of the legislature may not solicit or accept a gift for his or her child unless one of the exceptions in Section 36.10 of the Penal Code applies. A member of the legislature may not solicit or accept a gift for his or her child from a lobbyist unless the gift is permissible both under Chapter 36 of the Penal Code and under the lobby law.

The expenditure reporting requirements apply only to expenditures made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

References: Penal Code, §36.10, and Government Code, §§ 305.006, 305.024, and 305.025
EAO - 421 and 428

Member's Niece or Nephew

A candidate may not use political contributions to pay himself or herself for campaign work, but compensation to a niece or nephew may be paid (is permissible) if based on the fair market value of the work.

References: Election Code, §§ 253.035 and 253.041 (a)
EAO - 434

*No man is above the law and no man is below it; nor do we
ask any man's permission when we ask him to obey it.*

—Theodore Roosevelt

LEGISLATIVE/POLITICAL ADVERTISING

Legislative advertising is any advertisement which proposes legislation or states a position on legislation (for or against passage) that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication. Such advertising must include a disclaimer or disclosure statement if a contract or agreement to print, publish, or broadcast the legislative advertisement has been entered.

The disclaimer must state that the message is a legislative advertisement and include the name of the person, committee, or firm purchasing the advertising and the name of any client represented.

Printed advertisements must also include the complete addresses of the purchaser and client.

Political advertising includes a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical, or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website.

Although provisions governing legislative advertising (found in the Government Code) and political advertising (found in Title 15 of the Election Code) are similar, there are differences. For example, buttons with legislative advertising require a disclosure statement, whereas buttons with political advertising do not. Legislative advertising requires the names of both the person who entered the contract to produce and distribute the advertisement as well as the representative of that person (if there is one); political advertising requires the name of either one of those persons.

Political advertising as defined by the Election Code does not constitute legislative advertising under Government Code, Section 305.027 (Required Disclosure on Legislative Advertising).

Penalty: Class A misdemeanor.

References: Government Code, §§ 305.027, 305.031; Election Code, § 255.001; 1 TAC § 26.3
EAO - 188

Disclaimers in Political Advertising

Any advertisement that contains express advocacy for a position or for or against a political party, a public officer, a measure, or a candidate for public office is a political advertisement and must include a disclaimer.

The disclaimer must appear on the face of the advertisement and must state that the message is a political advertisement and provide the name of the purchaser. The purchaser is either the individual who personally entered into the contract or the person or entity that individual represents. The name of the campaign treasurer does not satisfy this requirement unless he or she personally entered into the contract.

Printed advertisements must also include the address of the purchaser. Some campaign materials such as a ticket or an invitation to a political fund-raiser, advertising on letterhead that contains disclaimer information, campaign buttons, pins, hats, or other small objects do not have to include the disclaimer. Circulars or fliers that cost in the aggregate less than \$500 to publish and distribute do not require a disclosure statement. Political advertising that appears on letterhead stationery that contains certain information does not require a disclaimer.

Political advertising that appears on letterhead stationery that contains certain information does not require a disclaimer.

Political advertising authorized by a candidate, a candidate's agent, or political committee is deemed to contain express advocacy.

Misrepresentation of the source of political advertising with intent to injure a candidate or influence the result of an election is a violation of the law.

Section 305.027 of the Government Code sets forth the required disclosure on legislative advertising.

Penalty: Class A misdemeanor. A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed \$4,000.

Reference: Election Code, § 255.001

EAO - 77, 102, 144, 183, 184, 188, 289, 321, 376, 380, 387, 390, 424, 435, 442, and 457

Disclaimers on Signs Seen From Roadways

Political advertising on signs designed to be viewed from a road, including yard signs, requires an additional disclaimer.

Penalty: Class C misdemeanor

Reference: Election Code, § 255.007

Unlawful Use of Internal Mail System for Political Advertising

An officer or employee of a state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising. The prohibition does not apply to the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency or political subdivision through the United States Postal Service or the use of an internal mail system by a state agency or municipality to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency or municipality.

Penalty: Class A misdemeanor

Reference: Election Code, §255.0031

True Source of Communication

A person may not contract for political advertising and knowingly name the wrong purchaser in the disclaimer. A person may not knowingly attribute a statement in a campaign communication to the wrong source.

Penalty: Class C misdemeanor

References: Election Code, § 255.004

Misuse of Public Funds

An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

A factual communication describing the purpose of a measure that does not advocate a pro or con position is not considered a political advertisement under this law.

Penalty: Class A misdemeanor

Reference: Election Code, § 255.003

EAO - 45, 211, 338, and 343

Use of Title or State Seal

A person may not represent in a political advertisement that the candidate holds a public office that the candidate does not hold. A person, other than an officeholder, may not use the Great Seal of Texas in a political advertisement.

Penalty: Class A misdemeanor

Reference: Election Code, § 255.006

EAO - 171, 196, 210, 303, 321, 376, 385, and 442

Genuine politics—even politics worthy of the name, the only politics I am willing to devote myself to—is simply a matter of serving those around us: serving the community and serving those who will come after us. Its deepest roots are moral because it is a responsibility expressed through action, to and for the whole.

—Vaclav Havel

Section II

Financial Disclosure

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FINANCIAL STATEMENTS

This section discusses the two types of financial disclosure required of a member:

- ❖ Personal Financial Statements; and
- ❖ Campaign Finance Reports.

Filing reports is the responsibility of the candidate or officeholder, not the campaign treasurer.

Statements of law presented herein are not intended to substitute for legal counsel opinions or to act as formal legal advice. The reader is encouraged to contact an attorney or the Texas Ethics Commission for formal advice on specific fact situations.

Personal Financial Statements

Who Must File

Every member and candidate for an office as an elected officer must file an annual report of personal financial activity, i.e., a personal financial statement (PFS) that complies with Government Code, Sections 572.021 through 572.0252.

References: Government Code, §572.021, et seq.
EAO - 1

Where to Get Forms and File Statements

The executive director of the commission prescribes the forms for statements and reports required to be filed with the commission. Computer software for electronic filing is provided by the commission. If a member or candidate elects to use a form or software that is not provided by the commission, that form or software must be approved by the commission in advance.

Except for certain special pre-election reports that are exempt from the electronic filing requirement, all reports required by Chapters 20 through 40 must be filed

in a format prescribed by the commission or on forms approved by the executive director pursuant to Section 18.1 of the Texas Administrative Code.

Substitute forms may only be used if they are substantially the same as those provided by the commission or are approved by the executive director of the commission. A filer who files a report using computer software provided by the commission must use the most current version of the software.

References: Government Code, § 572.030; 1 TAC §§ 18.1 and 20.19

When to File

Members must file a PFS each year, on or before 5 p.m., on April 30 unless one of the alternate filing deadlines discussed below is applicable. If the deadline falls on a Saturday or a Sunday or on an official holiday, the report must be filed on the next business day. If a member is on the ballot on one of the uniform election dates, additional reports must be filed.

The filing deadline for any report filed electronically with the commission is midnight on the last day for filing the report under the law requiring the filing of the report. Special pre-election reports are due on the date assigned by the sections requiring those reports to be filed.

Alternate filing deadlines apply in certain circumstances:

- ❖ Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, a candidate for an office as an elected officer must file a PFS.
- ❖ If the date for filing for ballot access or filing a declaration of write-in candidacy falls after the regular filing deadline for candidates in the primary election, the deadline may vary.
- ❖ An individual who is a candidate in a special election for an office as an elected officer shall file the financial statement not later than the fifth day before the date of that election.
- ❖ Persons “holding over” in office must file a PFS. If a person resigns or the person’s term expires before January 1, the person must file a financial statement if their successor was not appointed and duly qualified before January 1.

- ❖ An appointee filling a vacancy in elective office must file on the earliest of the following dates within 14 days of appointment or qualification, or before the first committee hearing on confirmation if senate confirmation is required.

If you have any questions, please contact the Ethics Commission to determine whether alternate filing deadlines apply.

A PFS is considered timely filed if is properly addressed, postage prepaid, and post-marked on or before the deadline. A report is considered to be timely if it is complete and is filed by the applicable deadline using the reporting method required by law. A report is late if it is incomplete, not filed by the applicable deadline, or not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of those methods.

Penalty: Government Code, §§572.033 (Civil Penalty) and 572.034 (Criminal Penalty). The civil and criminal penalties are discussed in more detail in subsequent sections of this publication. References: Government Code, §§ 572.026 - 572.029; 1 TAC §§ 6.9, 18.7, 20.20, 20.21, and 20.23

Extensions

A member may request one extension of not more than 60 days for filing a financial statement. The commission is required to grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The commission may not grant more than one extension to a member in one year except for good cause shown. Extensions may not be granted for a PFS that is required when a member is a candidate in an election.

Reference: Government Code, § 572.026(d)
EAO - 28

Corrected Reports

A member may file a corrected PFS report at any time. Corrected reports must comply with certain requirements set forth by the commission.

A corrected report is not subject to a late fine if it is filed in accordance with Section 571.0771 (Corrected Statements, Registrations, and Reports Considered Timely Filed) and Section 305.033(f) (Civil Penalty For Late Filing), Government Code. This does not apply to a corrected report filed under Section 571.069 (Review of Statements and Reports; Audits), Government Code, or a corrected report filed in response to a sworn complaint.

Reference: 1 TAC § 18.9

EAO - 391

What to File – Contents of a PFS Report

A member must file two copies of all personal financial activity in the preceding calendar year by the member, his or her spouse, and each dependent child. The financial activity of the spouse or child must be reported only if the member had actual control over the activity. Financial activity that must be reported includes:

- ❖ A list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of a person or other organization from which the member or a business in which the member has a substantial interest received a fee as a retainer for a claim on future services in case of need, as distinguished from a fee for services on a matter specified at the time of contracting for or receiving the fee, if professional or occupational services are not actually performed during the reporting period equal to or in excess of the amount of the retainer, and the category of the amount of the fee;
- ❖ Identification by name and the category of the number of shares of stock of any business entity held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;
- ❖ A list of all bonds, notes, and other commercial paper held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;
- ❖ Identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents;
- ❖ Identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or

lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year and the category of the amount of the liability;

- ❖ Identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale;
- ❖ Identification of a person or other organization from which the member or the member's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except: a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity; a political contribution that was reported; and an expenditure required to be reported by a lobbyist;
- ❖ Identification of the source and the category of the amount of all income received as beneficiary of a trust, other than a blind trust as defined below, and identification of each trust asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;
- ❖ Identification by description and the category of the amount of all assets and liabilities of a corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association in which 50 percent or more of the outstanding ownership was held, acquired, or sold;
- ❖ A list of all boards of directors on which the member serves and executive positions that the member holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships;
- ❖ Identification of any registered lobbyist providing transportation, meals, or lodging expenses permitted under law;
- ❖ Any corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association, excluding a publicly held corporation, in which both the member and a registered lobbyist have an interest;
- ❖ Identification by name and the category of the number of shares of any mutual fund held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;
- ❖ Identification of each blind trust, including: the category of the fair

market value of the trust; the date the trust was created; the name and address of the trustee; and a statement signed by the trustee, under penalty of perjury, stating that: the trustee has not revealed any unlawful information to the member; and to the best of the trustee's knowledge, the trust complies with this section;

- ❖ Any fee and source of the fee earned for services performed for a lobbyist or for a person or business entity that is known to compensate or reimburse a lobbyist; and
- ❖ The name of the agency and the amount and source of compensation earned for representing a person before an executive state agency.

A member or member-elect licensed to practice law in this state who represents a party to a civil or criminal case for compensation and on that party's behalf applies for or obtains a legislative continuance under Section 30.003, Civil Practice and Remedies Code, or under another law or rule that requires or permits a court to grant a continuance on the grounds that an attorney for a party is a member or member-elect of the legislature must report certain information relating to such continuances.

A state officer who is an attorney must report making or receiving any referral for compensation for legal services and the category of the amount of such fees.

A **blind trust** is a trust as to which the trustee is a disinterested party; is not the individual; is not required to register as a lobbyist under Chapter 305, Government Code; is not a public officer or public employee; and was not appointed to public office by the individual or by a public officer or public employee the individual supervises; and the trustee has complete discretion to manage the trust, including the power to dispose of and acquire trust assets without consulting or notifying the individual.

If a blind trust is revoked, the member must file an amendment to the member's most recent financial statement, disclosing the date of revocation and the previously unreported value by category of each asset and the income derived from each asset.

If a member has reported receipt of conference transportation, meals or lodging expenses on his or her campaign finance report, these items do not need to be listed again on the member's PFS report.

References: Government Code, §§ 572.023, 572.024, 572.025, and 572.0251
EAO - 17, 28, 29, 71, 156, 186, 238, 252, 273, 326, 333, 370, 371, 392, 401, 415, 421, and 428

Maintaining Report Records

The commission recommends that each filer keep copies of personal financial disclosure for two years.

The required records must contain all information used to prepare all required reports, including bank statements, check logs, receipts, and ledgers of contributions and expenditures.

Reference: 1 TAC § 20.17
EAO - 236

Reporting By Amounts or Ranges

There are two categories of reporting for a PFS. For certain items, members may file reports using the actual amount found on the balance sheet or income statement. For other items, members may file the report by indicating a range that encompasses the amount of the specific financial activity.

Real Property – For real property transactions, the member must report the street address, if available, or the number of lots or number of acres, as applicable, in each county, and the name of the county, if the street address is not available; and the names of all persons retaining an interest in the property, excluding an interest that is a severed mineral interest.

Financial Transactions – For a dollar amount required to be reported by category, the member must specify which of the following ranges includes the reportable amount:

- ❖ Less than \$5,000;
- ❖ \$5,000 but less than \$10,000;
- ❖ \$10,000 but less than \$25,000; or
- ❖ \$25,000 or more.

Stock Transactions – For all stock transactions, the member is required to report an amount of stock by category of number of shares instead of by category of dollar value and must report the amount as:

- ❖ Less than 100 shares;
- ❖ 100 shares but less than 500 shares;
- ❖ 500 shares but less than 1,000 shares;
- ❖ 1,000 shares but less than 5,000 shares;
- ❖ 5,000 shares but less than 10,000 shares; or
- ❖ 10,000 shares or more.

Gift of Cash or A Cash Equivalent – For a gift of cash or a cash equivalent of value in excess of \$250, such as a negotiable instrument or gift certificate, the member must include in the description of the gift a statement of the value of that gift. Exceptions to this requirement include a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity; a political contribution that was reported as required by Chapter 254 (Political Reporting), Election Code; and an expenditure required to be reported by a person required to be registered under Chapter 305 (Registration of Lobbyists), Government Code.

Reference: Government Code, § 572.022

Civil Penalty for Late Filing of a PFS Report

The executive director of the commission must determine whether a report is filed late and must notify the filer that the report is late. If a statement is determined to be late, the individual responsible for filing the statement is liable to the state for a civil penalty.

A \$500 penalty is automatically assessed for the late filing of a financial statement. Other sanctions may be applicable. If the report is more than 30 days late and the base fine of \$500 is not paid by the 10th day after notice, the commission may assess a fine not to exceed \$10,000.

If the filer fails to file a report or pay an assessed penalty, the matter may be referred to the Office of the Attorney General. Criminal penalties may apply.

The executive director of the commission may grant a waiver of an administrative fine if a report is filed late due to certain specified circumstances.

References: Government Code, §§ 572.031 and 572.033; 1 TAC §§ 18.13 -18.23

Criminal Penalty for Willful Failure to File a PFS

A member commits a Class B misdemeanor if the member knowingly and willfully fails to file a PFS. It is a defense to prosecution that the member did not receive copies of the PFS forms.

Reference: Government Code, § 572.034

PFS Report Must Be Filed

The satisfaction of the civil or criminal penalty imposed for the late filing of a report or the failure to file a report does not relieve the member of the obligation to file the report. Penalties continue to accrue until the required information has been provided.

References: Government Code, §572.021; 1 TAC § 18.17

Public Access To PFS Reports

Personal financial statements and affidavits filed under this chapter are public records and are available at the offices of the commission. The commission is required to maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours. After the second anniversary of the date the individual ceases to be a state officer, the commission is authorized and on notification from the former state officer is required to destroy each financial statement filed by that individual.

Reference: Government Code, § 572.032

Ethical government means much more than laws. It is a spirit, an imbued code of conduct. It is a climate in which, from the highest to the lowest ranks of policy and decision-making officials, some conduct is instinctively sensed as correct and other conduct as being beyond acceptance.

—The Volcker Commission

Campaign Finance Reports

Campaign Treasurer Requirement

A member, who is not a candidate, is not required to appoint a treasurer as long as contributions are accepted and expenditures are made exclusively for officeholder purposes.

A member, who is a candidate, must have a campaign treasurer appointment on file with the commission before accepting a campaign contribution or making or authorizing a campaign expenditure, including campaign expenditures from personal funds.

A member may appoint anyone as his or her campaign treasurer, including a family member or the member.

A person is ineligible for appointment as a campaign treasurer if the person is the campaign treasurer of a political committee that does not file a report required by Chapter 254 (Political Reporting), Elections Code, and certain conditions exist. A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions accepted or political expenditures made in violation of this section.

Penalty: Class A misdemeanor

References: Election Code, §§ 252.001, 252.0011, 252.004, and 253.031; 1 TAC §§ 20.201 and 22.1

EAO - 422

Campaign Treasurer Appointment and Termination

The appointment of a campaign treasurer is effective when the appointment is filed with the commission and until it is terminated. A hand-delivered appointment takes effect on the date of delivery. A mailed appointment takes effect on the date of the postmark.

A candidate may terminate a campaign treasurer by appointing another person as campaign treasurer or by filing a final report. The filing of a new campaign

treasurer appointment form automatically terminates the appointment of the old campaign treasurer.

A campaign treasurer may terminate his or her own appointment by notifying both the member and the commission in writing. The termination is effective on the date the candidate receives the notice or on the date the commission receives the notice, whichever is later.

The commission may terminate the campaign treasurer appointment of an inactive candidate or political committee under certain conditions. The commission must consider the proposed termination in a regularly scheduled open meeting. The commission is required to promptly notify the affected candidate or political committee that the appointment has been terminated and the effective date of the termination.

The campaign treasurer of a candidate has no legal duties. Filing reports is the legal responsibility of the candidate or officeholder. The candidate or officeholder, not the campaign treasurer, must sign the reports.

References: Election Code, §§ 252.005, 252.011, 252.012, 252.013, and 252.0131; 1 TAC §§ 20.33, 20.35 , 20.206, 20.207, and 20.209

Who Must File

All members must file personal financial statements and campaign finance reports with the commission. The candidate or officeholder, not the campaign treasurer, is responsible for complying with the reporting laws and rules.

A member, even after he/she files a final campaign report, is still required to file reports as an officeholder.

References: Election Code, § 251.002; 1 TAC §§ 20.3 and 20.209

Who Must File Electronically

Members must file campaign finance reports electronically via the Internet, a modem, a diskette, or other means of electronic transfer prescribed by the commission.

However, members are exempt from electronic filing if a member files an affidavit stating that the member or the person acting on behalf of the member does not use computers to keep current records of political contributions, expenditures, or donors or if the member does not accept or spend more than \$20,000 in a calendar year.

Reports not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report affirming, under penalty of perjury, that the report is true and correct and includes all information required to be reported under Title 15, Election Code. The report must contain, in compliance with commission specifications, the digitized signature of the person required to file the report that is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit.

A written statement identifying the manner of electronic transfer or altering the manner of filing that the person will use to file the report must be submitted to the commission not later than the 30th day before the filing deadline for the first report a person is required to file.

A person who is required to file reports under this chapter may use a publicly accessible computer terminal that has Internet access and web browser software to prepare the reports, except that an officeholder may not use a computer issued to the officeholder for official use to prepare the report.

References: Election Code, §§ 254.036, 254.0361, and 254.0362; 1 TAC §§ 18.7 and 20.19

Obtaining Forms and Filing Reports

The commission is required to notify each member of reporting deadlines and to mail copies of the forms or electronic filing software (if needed) for each reporting period. Substitute forms or software may be used if approved by the commission.

Officeholder and campaign report filing schedules are available online at: <http://www.ethics.state.tx.us/schedule/schedules.htm>.

References: Election Code, §§ 251.033 and 254.036(c); 1 TAC §§ 18.1 and 20.19

EAO - 7

Retention of Records

A member must maintain a copy of each campaign finance report filed and the records supporting that report for two years from the date of the filing deadline of the report. A member must maintain a record of all reportable activity.

Penalty: Class B misdemeanor

References: Government Code, § 254.001; 1 TAC § 20.17

EAO - 308

Public Access To Reports

All campaign finance reports filed under Chapter 254 of the Election Code are public records and are available for viewing at the offices of the commission. Electronically filed reports will also be available on the Internet within a certain period of time. The commission is required to preserve each report filed with the commission for at least two years after the date a report is filed.

References: Election Code, §§ 254.040, 254.0401, and 254.0402

Required Affidavit on Campaign Finance Report

Except for special report near election reports, each report must bear the following affidavit executed by the person required to file the report:

I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.

Each report filed by electronic transfer must be under oath by the person required to file the report and must contain, in compliance with commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit.

References: Election Code, § 254.036 (h); 1 TAC § 20.25

What to File

Specific information to be contained in the reports will not be addressed in this publication. Chapters 253 and 254 of the Election Code delineate the specific information required in each report.

The requirements governing the content of reports have changed. For example, there are new rules relating to “cash-on-hand” reporting and a requirement relating to contributor occupation and employer information. There is also a provision regarding certain *de minimis* errors and whether such errors constitute a violation.

Reference: 1 TAC § 20.219

Timely Filing of Reports

Two copies of each campaign finance report not filed electronically must be hand delivered to the commission or posted with a common carrier or the United States Postal Service on or before 5 p.m. on the day the report is due. The deadline for any report filed electronically with the commission is midnight on the last day for filing the report under the law requiring the filing of the report.

If the day the report is due falls on a state holiday, a national holiday, or a weekend, the report is due the next business day. This does not apply to special report near election reports which must be received by the commission no later than the report due date to be considered filed on time.

References: Election Code, §254.037; 1 TAC §§ 18.19, 18.21, 18.7, 20.21, and 20.23

Report After Appointment of a Campaign Treasurer

An officeholder must file a report after initially filing a campaign treasurer appointment. A report is not required following a change in campaign treasurers. This report is due no later than 15 days after the campaign treasurer appointment was filed even if there is no contribution or expenditure activity to report.

The report covers the period beginning the day after the period covered by the last required report and ending on the day before the campaign treasurer appointment was filed.

Reference: 1 TAC § 20.277

Semiannual Report

All members must file two campaign financial reports per year. One is due on or before January 15 and usually reflects the activity of the previous July 1 through December 31 time period. The next report is due on July 15 and usually reflects the activity of the previous January 1 through June 30 time period.

If other campaign finance reports are due during the year, the semiannual report is modified to reflect only activity from the end of the other report's activity period to June 30 or December 31, as appropriate.

The semiannual campaign financial report must be filed even if no political contributions were received or no political expenditures were made.

References: Election Code, § 254.093; 1 TAC §§ 20.65 and 20.273

Pre-Election Reports of Opposed Candidates

A candidate who has an opponent on the ballot in an election must file two pre-election reports.

The first pre-election report must be received by the commission not later than 30 days before election day. If this report is the first report filed by the candidate, the report covers the period that begins on the day the candidate's campaign treasurer appointment was filed. If this is not the first report, the period begins on the first day after the period covered by the last report filed by the candidate other than a special pre-election report or a special session report or a report filed by an officeholder who does not have a campaign treasurer appointment on file. The period covered by the report continues through the 40th day before the election.

The second pre-election report must be received by the commission not later

than eight days before election day. The report covers the period that begins on the 39th day before the election and ends on the 10th day before the election.

If a person becomes an opposed candidate during the period that begins on the 39th day before the election and ends on the 10th day before the election, the candidate is required to file one pre-election report. That report covers the period that begins on the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report, or on the first day after the period covered by the last report filed other than a special pre-election report or a special session report or a report filed by an officeholder who does not have a campaign treasurer appointment on file. The period covered by the report ends on the 10th day before the election.

If a person becomes an opposed candidate after the 10th day before the election, the person is not required to file pre-election reports. The candidate in this instance is required to file any special pre-election reports required by Section 20.221 of the Texas Administrative Code.

A person who is eligible for modified reporting is not required to file these reports. (See: Modified Reporting)

References: Election Code, §§ 254.038 and 254.064; 1 TAC §§ 20.213, 20.215, 20.217, 20.221, and 20.223

Special Pre-Election Reports

A candidate who is opposed is required to file special pre-election reports (formerly called telegram reports) if the candidate accepts political contributions from a single source that in the aggregate exceed \$1,000 during the reporting period (the period begins nine days before the election and ends at noon on the day before the election). A specific-purpose committee for supporting or opposing a candidate that accepts political contributions from a single source that in the aggregate exceed \$1,000 during that reporting period must also file special pre-election reports.

Special pre-election reports must include the amount of the contributions, the full name and address of the person making the contributions, and the dates of the contributions. This report must be filed electronically, unless the filer is eligible for the exemption from electronic filing. A report that is exempt from the

electronic filing requirement is not required to be on a prescribed form or include a notarized oath. A report that is exempt from the electronic filing requirement may be on regular stationery.

Special pre-election reports must be received by the commission not later than midnight of the first business day after the contribution is accepted. A report that is filed on paper must be received by the commission not later than 5 p.m. of the first business day after the contribution is accepted.

Any information reported on a special pre-election report must also be reported on the subsequent campaign finance report of contributions and expenditures. This is the only instance in which information must be reported twice.

A person who is eligible for modified reporting is not required to file these reports. (See: Modified Reporting)

References: Election Code, § 254.038; 1 TAC §§ 20.213, 20.221, and 20.223

Runoff Report

A member who is a candidate in a runoff election is required to file a runoff report. If the member has declared an intention to file reports under the modified reporting provisions (see: Modified Reporting) and remains eligible to file under that schedule, he or she is not required to file a runoff report.

A runoff report must be received by the commission no later than the eighth day before the runoff election. A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the 10th day before the runoff.

References: 1 TAC §§ 20.221 and 20.223

Special Legislative Session Report

Any contributions accepted by a member during the period beginning with the date of the governor's proclamation calling a special legislative session through final adjournment must be reported not later than the 30th day following the date of adjournment.

Contributions are considered accepted if not returned within three days of receiving the contribution. Contributions reported on this report are not to be reported in any other report.

A member is not required to file a special session report if he or she is required to file another campaign finance report that is due no later than 40 days after adjournment of the special session.

References: Election Code, § 254.0391; 1 TAC §§ 20.225, 20.227, 20.281 and 20.283
EAO - 6

Final Report

A member, who is a candidate and who expects no further reportable contributions or expenditures (including paying off campaign debt) in connection with his or her candidacy, may designate a campaign finance report as the final report.

The act of designating a report as final will terminate the campaign treasurer appointment and will relieve the member of further reporting responsibility related to being a candidate. The member will still be required to file semiannual campaign finance reports. If, after filing the final report, activity related to the candidacy occurs, the member is required to file all campaign finance reports until another report is designated as the final report.

References: Election Code, § 254.065; 1 TAC §§ 20.229(f) and 20.231(7)

Annual Report on Unexpended Political Funds

A former member, who did not have a campaign treasurer on file at the time of leaving office, must file an annual report no earlier than January 1 or later than January 15 of each year on any political funds, including unexpended contributions, interest, and other income earned from political funds.

References: Election Code, §§ 254.201 and 254.202; 1 TAC §§ 20.233 and 20.235

Modified Reports

Members are given the option to choose modified reporting for the next election cycle by selecting the option on the campaign treasurer appointment form. An opposed candidate is eligible for modified reporting only if the candidate does not intend to exceed either \$500 in contributions or \$500 in expenditures in connection with an election. Modified reporting excuses an opposed candidate from filing reports 30 days and eight days before an election and eight days before a runoff election.

If an opposed candidate selects modified reporting but exceeds the threshold before the 30th day before the election, the candidate must file required reports according to the regular filing schedule.

If an opposed candidate exceeds the threshold for contributions or expenditures after the 30th day before the election, the candidate must file a report within 48 hours of exceeding the threshold even if such an event occurs on a weekend or a holiday. The candidate is no longer eligible for modified reporting and must submit required reports according to the regular filing schedule.

A selection to file on the modified reporting schedule lasts for an entire election cycle. A candidate must submit an amended campaign treasurer appointment to select modified reporting for a different election cycle.

Reference: 1 TAC § 20.217

*Ethics and equity and the principles of justice do not
change with the calendar.*

—D. H. Lawrence

Time Limit on Retaining Contributions

A former member may retain political funds for up to six years from the date the member leaves office or terminates his or her campaign treasurer appointment or files a final report, whichever is later.

The six-year limitation ceases to run if the former member becomes an officeholder or a candidate.

References: Election Code, § 254.203; 1 TAC § 20.237

Disposition of Unexpended Funds

A former member must dispose of all unexpended political funds at the end of the six-year period by giving the funds to his or her own political party, to another candidate or political committee, to the State of Texas, to persons from whom contributions were received (with restrictions), to a recognized, tax-exempt charitable organization, or to a public or private college scholarship program.

A report on this disposition is due no later than 30 days after the six-year retention period expires.

References: Election Code, §§ 254.204 and 254.205; 1 TAC §§ 20.237, 20.239, and 20.241
EAO - 47, 149, 169, and 437

Reporting Staff Reimbursement

Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:

- ❖ the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; and

- ❖ included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

Except as noted above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows:

- ❖ the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee;
- ❖ the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and
- ❖ the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.

Reference: 1 TAC § 20.62

Administrative Penalties

- ❖ Late Report (general) – \$500 base fine.
- ❖ More than 30 days late – The commission may assess \$100 for each day the first 30 days. A penalty up to \$10,000 may be assessed after notice and continued failure to file and pay the base penalty.
- ❖ Late pre-election reports and some semiannual reports – The fine for a pre-election or for the first semiannual report that is required to be filed by a candidate or political committee following the primary or general election is \$500 for the first day the report is late and \$100 for each day thereafter that the report is late, up to a maximum fine of \$10,000.

References: Election Code, § 254.042; 1 TAC §§ 18.13, 18.15, 18.17, and 18.19

Civil Liability for an Incomplete Report

A member, who is a candidate and who fails to report in whole or in part a campaign contribution or expenditure, is liable for damages and reasonable attorney's fees. Damages are twice the amount not reported. Damages and attorney's fees may be awarded to each opposing candidate.

Reference: Election Code, § 254.231

Liability for an Incomplete Report

A member or candidate who fails to report in whole or in part a political contribution or expenditure is liable for damages to the state in the amount of triple the amount not reported.

Reference: Election Code, § 254.232

Criminal Penalty for an Untimely or Incomplete Report

A member commits a Class C misdemeanor if he or she knowingly fails to file a campaign finance report that contains required information, in a timely manner, and in the appropriate format.

A member commits a Class C misdemeanor if he or she knowingly fails to include information required in the report, with the following exception: a member commits a Class A misdemeanor if he or she knowingly fails to include certain information on political committees associated with the candidate.

Reference: Election Code, § 254.041

An ethical person ought to do more than he is required to do and less than he is allowed to do.

—Unknown

Corrected Report

A member may correct a report filed with the commission at any time. A corrected report must clearly identify how the corrected report is different from the original report.

A corrected report is not considered late for purposes of any late fine if the original report was filed by the applicable filing deadline and substantially complies with the applicable law and the corrected report is filed not later than the 14th business day after the date the person learns that the report as originally filed is inaccurate or incomplete and is complete and accurate.

An affidavit identifying the information that was corrected must accompany the corrected report.

These requirements do not apply to a corrected report filed under Section 571.069 (Review of Statements and Reports; Audits), Government Code, or a corrected report filed in response to a sworn complaint.

Who is Penalized

A member who is a candidate, not the campaign treasurer, is responsible for filing campaign finance reports. The campaign treasurer has no legal responsibilities; therefore, penalties are assessed against the member.

Reference: EAO - 206

Paying Monetary Penalties

Although the member, who is a candidate, is responsible for the penalties assessed, the fines may be paid from the candidate's political funds, the candidate's personal funds, or the campaign treasurer's personal funds.

Reference: EAO - 206

Section III

The Ethics Commission

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THE TEXAS ETHICS COMMISSION

This chapter discusses the Texas Ethics Commission, its constitutional powers, and its statutory responsibilities and duties.

In addition to laying out the scope of work of the commission, the law details two procedures to be administered by the agency: the sworn complaint review process and the issuing of formal Ethics Advisory Opinions (EAOs) on the applicability of the law to fact situations.

Additionally, the commission is authorized to levy fines and impose administrative sanctions when actions of persons or committees are found to be at variance with law or commission rule.

Highlights of the commission charter:

- ❖ The commission is a constitutional body governed by an eight-person board, appointed by the governor, lieutenant governor, and speaker of the house of representatives;
- ❖ The commission administers and enforces laws dealing with the standards of conduct of public officials and employees, personal and campaign financial disclosure, the regulation and registration of lobbyists, and the election of the speaker of the house;
- ❖ The commission may recommend salary levels for the lieutenant governor, the speaker of the house of representatives, and members of the legislature and may cause the issue to be put to the voters in a binding referendum on the following general election ballot;
- ❖ The commission sets the per diem for the lieutenant governor and members of the legislature;
- ❖ The commission investigates, resolves, and/or imposes civil penalties for violations of the laws on ethics and financial reporting;
- ❖ The commission is required to establish methodologies, practices, and rules for the registration and financial accounting/reporting required of officeholders, candidates, committees, and lobbyists;
- ❖ The commission issues opinions on questions about the laws it administers. These questions come from persons regulated by the commission, such as lobbyists and officeholders, or can be generated by the commission itself. The adopted opinions are regularly sent to each senator's office;

- ❖ The commission provides training for members, members-elect, and state employees on ethics and other laws administered by the commission; and
- ❖ The commission has developed an interactive electronic database so that the information received on lobby reports, campaign reports, and personal financial disclosure statements can be accessed easily and quickly.

The commission was created on November 21, 1991, by a constitutional amendment approved by the voters on November 5, 1991. The commission's statutory powers and duties became effective on January 1, 1992.

Commission Membership

The commission is governed by an eight-member board, appointed to four-year staggered terms. The board is appointed as follows:

- ❖ Two members appointed by the governor* from different political parties, chosen from a list of at least 10 names submitted by the members of the Senate;
- ❖ Two members appointed by the governor* from different political parties, chosen from a list of at least 10 names submitted by the members of the House of Representatives;
- ❖ Two members appointed by the lieutenant governor from different political parties, chosen from a list of at least 10 names submitted by the members of the Senate; and
- ❖ Two members appointed by the speaker of the House of Representatives from different political parties, chosen from a list of at least 10 names submitted by the members of the House of Representatives.

** The governor may reject all names on any list submitted to him or her and may require a new list to be submitted.*

A person may not be a member of the commission if the person is required to register as a lobbyist.

References: Texas Constitution, Article III, §§ 24a (a), (b), and (c); Government Code, §572.0231

Chairman of the Commission

The members of the commission elect the chairman annually.

References: Texas Constitution, Article III, §24a (b); Government Code, §571.0231

Grounds for Removal

A commission member may be removed if the member: does not have at the time of taking office the qualifications required by Section 24a, Article III, Texas Constitution; does not maintain during service on the commission the qualifications required by Section 24a, Article III, Texas Constitution; is ineligible for membership because the person is a registered lobbyist; cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

Reference: Government Code, §571.0232

Quorum Required for Votes

A majority of the membership of the commission constitutes a quorum. A vacancy on the commission may not be considered in determining the membership of the commission for the purpose of a quorum.

An action or recommendation of the commission requiring a vote of the commission is not valid unless the action or recommendation is approved by a record vote taken at a meeting of the commission with a quorum present and the action or recommendation receives an affirmative vote of a majority of the membership of the commission.

Reference: Government Code, §571.026

Prohibited Participation

A member of the commission may not participate in a commission proceeding relating to any of the following actions: if the member is the subject of a formal investigation, a sworn complaint, or a motion adopted by vote of at least six members of the commission.

A member of the commission may not participate in or vote on any matter before the commission if the matter concerns the member directly or an individual related to the member within the second degree by affinity or consanguinity.

Reference: Government Code, § 571.027

Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

—Louis Brandeis

Commission Member Training

A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

Reference: Government Code, § 571.027

Separation of Responsibilities

The commission is required by law to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Reference: Government Code, § 571.030

Constitutional Powers and Duties

The Texas Constitution specifies the following commission duties and responsibilities:

- ❖ The commission shall set the per diem for the lieutenant governor and members of the legislature, biennially.
- ❖ The commission may recommend the salaries of the lieutenant governor, members of the legislature, and the speaker of the House of Representatives. These recommendations shall be proposed to the voters in a binding referendum on the following general election ballot.
- ❖ The commission may recommend that the salary of the lieutenant governor and the speaker of the House of Representatives be set at an amount higher than that of other members.

References: Texas Constitution, Article III, §§ 24 (a) and 24a (e) and (f), and Article IV, § 17(b)

Statutory Powers and Duties

The law grants substantial power and assigns significant duties to the commission. The following is a partial listing:

- ❖ The commission is required to adopt rules establishing methods of accounting and reporting for use in filing all statements and reports. The commission is prohibited from adopting a rule on a matter which is the subject of pending litigation known to the commission. This duty to adopt rules includes the publishing of a manual of uniform accounting methods;
- ❖ The commission is required by January of each odd-numbered year to provide training for members and members-elect on the laws administered by the commission;
- ❖ The commission is required to provide ethics training for state employees;
- ❖ The commission is authorized to issue subpoenas;
- ❖ The commission is authorized to initiate civil enforcement actions pertaining to a breach of the law. These enforcement actions may take the form of monetary fines and administrative orders, such as cease and desist orders;
- ❖ The commission is authorized to accept gifts, grants, and donations for the administration of its duties;
- ❖ The commission is required to establish dollar amounts as lobby reporting or registration thresholds;
- ❖ The commission is authorized to investigate possible violations of the laws it administers, on its own volition on an affirmative vote of six members of the board;
- ❖ The commission is authorized to audit the financial records of officeholders, candidates, committees, and lobbyists required to file with the commission. This audit power may be exercised during an informal or formal hearing;
- ❖ The commission is required to review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents; and
- ❖ The commission is required to submit reports to the governor and legislature regarding commission activities.

Reference: Government Code, Chapter 571

Sworn Complaint Hearings Process

The commission is authorized to review, investigate, hold hearings, negotiate resolution of issues, and issue findings. The commission may initiate a review of an alleged wrongdoing by a record vote of at least six members. No vote of the commission is required to initiate a review of facts presented in a sworn complaint.

Violations considered by the commission are categorized as a Category One violation (a violation of a law within jurisdiction of the commission in which it is generally not difficult to ascertain whether the violation occurred or did not occur, such as the failure by a person required to file a statement or report a misrepresentation in political advertising or a campaign communication) or a Category Two violation (a violation of a law within the jurisdiction of the commission that is not a Category One violation). The statute allows the executive director of the commission to make the determination as to which category a violation is placed in.

The review and hearing process is described below.

Preliminary Review

The form of complaints is spelled out in Section 571.122, Government Code. The commission staff is required to promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122. The commission must send a written notice to the complainant and the respondent who is the subject of the complaint (parties) within five business days stating whether the complaint complies with the form requirements. Procedures and timelines are set forth regarding resubmission of a complaint in order to comply with the form requirements. If the matter is submitted in the proper form, the matter proceeds to the preliminary review.

On a motion adopted by an affirmative vote of at least six commission members, the commission, without a sworn complaint, also may initiate a preliminary review.

The executive director of the commission must determine whether the issue is within the commission's jurisdiction. If a determination is made that the commission does not have jurisdiction or that the complaint does not meet the

criteria set forth in statute, the matter must be dismissed and the parties must be notified.

If the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, the complainant may request that the commission review the determination. A request for review under this section must be filed not later than the 30th day after the date the complainant receives the executive director's determination. The commission may reverse the executive director's determination only on the affirmative vote of at least six members. Written notice to the parties of the commission's decision is required to be sent within five business days.

If the alleged violation is a Category One violation, the respondent must respond to the notice within 10 business days on receipt of notice and if the matter is not resolved by agreement between the commission and the respondent before the 30th business day on receipt of notice, the commission must set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted. If the alleged violation is a Category Two violation the respondent must respond within 25 business days of receipt of notice and if the matter is not resolved by agreement between the commission and the respondent before the 75th business day, the commission must set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

A respondent's failure to timely respond is a Category One violation. The response must include any challenge the respondent seeks to raise and may include other related information.

If the commission sets the matter for a preliminary review hearing, the commission must promptly send to the parties written notice of the date, time, and place of the preliminary review hearing.

During a preliminary review, the commission staff may submit to the parties written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

The respondent may appear at this hearing, give evidence, and be represented by counsel.

If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the decision, the commission must send to the parties a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission must order a formal hearing to be held in accordance with Sections 571.129 through 571.132, Government Code, and within five business days send written notice setting forth certain information and a copy of the decision to the parties.

If the commission determines that there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has not occurred, the commission must dismiss the complaint or motion and notify the parties, in writing, within five business days.

If the commission determines that there is insufficient credible evidence to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or motion or promptly conduct a formal hearing under Sections 571.129 through 571.132, Government Code. Not later than the fifth business day after the date of the commission's determination, the commission must send to the parties a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

The executive director must dismiss a complaint if the commission fails to issue a decision under Section 571.126, Government Code, within 180 days after a preliminary review hearing.

During the hearing process, the commission must decide if there is credible evidence that a violation occurred. The commission may issue subpoenas, require responses to written questions, and review the evidence in any fashion necessary. The respondent may testify, present evidence, and be represented by counsel.

The preliminary hearing proceedings are not subject to the Open Meetings or Public Information Acts and all matters concerning the proceedings are confidential. An order issued by the commission after completion of the preliminary hearing determining that a violation has occurred is not confidential, with the exception of findings of technical or *de minimis* violations.

If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission may attempt to resolve the issue informally. If the informal resolution fails, the commission must proceed to a formal hearing.

References: Government Code, §§ 571.121 - 571.126; 1 TAC §§ 12.83 -12.87

Laws control the lesser man. Right conduct controls the greater one.

— Mark Twain

Formal Hearing

The procedures for a formal hearing are set forth in statute. The commission may issue subpoenas. During a formal hearing, the commission must determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred. These proceedings are open to the public, are subject to the Public Information Act, and are not confidential.

The commission must call a meeting and issue a formal order stating its finding not later than 30 business days after the proposal for final decision is issued by the State Office of Administrative Hearings. The motion on the final order in a formal hearing must be adopted by a vote of at least six members if the final decision is that a violation has occurred or by five members if the final decision is that a violation has not occurred.

Not later than the fifth business day after the date the commission issues the final decision and written report, the commission must notify the parties and make a copy of the decision and report available to the public during reasonable business hours.

Decisions by the commission may be appealed by filing a petition in the Travis County District Court or the district court in the home district of the respondent.

The commission is required to make available on the Internet as soon as practicable following a preliminary review, preliminary review hearing, or formal

hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction a copy of the commission's order stating the determination or a summary of the commission's order. This requirement does not apply to a determination of a violation that is technical or *de minimis*.

References: Government Code, §§ 571.129 - 571.141; 1 TAC §§ 12.117-12.119
EAO - 8

Sanctions for Violators

The commission is empowered, for violations of laws administered by the commission, to levy a civil penalty of not more than \$5,000, or triple the amount at issue, whichever is greater. The commission may issue certain administrative directives as it deems appropriate (e.g., cease and desist, etc.), and refer any suspected criminal matter to the relevant authority. The commission may deny, suspend, or revoke the lobby license of a lobbyist convicted of an offense under Chapter 36 of the Penal Code or under the Lobby Registration Act. These penalties may be assessed in addition to any other civil or criminal sanctions specified in the law.

References: Government Code, §§ 571.171 - 571.177
EAO - 336

Penalty for Frivolous Complaint or Breach of Confidentiality

The commission may impose a civil penalty of not more than \$10,000 for the filing of a frivolous or bad faith complaint. In addition to other penalties, a person who files a frivolous complaint or discloses confidential information is civilly liable to the respondent for the greater of \$10,000 or actual damages incurred, plus court costs and attorney fees.

Proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing of the commission or a judicial

proceeding, excepting a document or statement that was previously public information which remains public information.

Disclosure of confidential information is a Class C misdemeanor. In addition to other penalties, a person who discloses confidential information is civilly liable in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

References: Government Code, §§ 571.140 and 571.176; 1 TAC §§ 12.7 and 12.35

A man who aspires to any high office should have three qualifications: first, he should be prepared to support the constitution of his country; second, he should have a special aptitude for the office he desires; and third, he should have virtue and justice as they are understood by his fellow-citizens.

—Aristotle

ETHICS ADVISORY OPINIONS

In response to a written request, or by its own initiative, the commission is required to issue a written advisory opinion on the application of the following laws to the presented factual situation.

- ❖ Speaker of the House of Representatives (Chapter 302, Government Code);
- ❖ Governor for a Day and Speaker's Day (Chapter 303, Government Code);
- ❖ Registration of Lobbyists (Chapter 305, Government Code);
- ❖ Personal Financial Disclosure and Standards of Conduct for State Officers (Chapter 572, Government Code);
- ❖ Representation Before State Agencies (Chapter 2004, Government Code);
- ❖ Campaign Financial Reporting (Title 15, Election Code);
- ❖ Bribery and Related Offenses (Chapter 36, Penal Code); and
- ❖ Official Misconduct (Chapter 39, Penal Code).

Time Permitted to Issue Opinion

The commission shall render a written opinion within 60 days after the date of request. Two extensions of 30 days each are allowed the commission.

Confidentiality

The identity of the person requesting an opinion shall not be revealed unless the requesting person waives the right.

EAO as a Defense

Reasonable reliance on a written advisory opinion of the commission relating to the law the person is alleged to have violated or to a fact situation substantially similar to the one discussed in the opinion is a defense against prosecution or imposition of civil penalties.

References: Government Code, §§ 571.091 - 571.097; 1 TAC §§ 8.1 - 8.21
EAO - 202

LEGISLATIVE PER DIEM

The per diem has been set at \$168 for each day during the regular session and any special session in 2009.

Reference: 1 TAC § 50.1

Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight and spend for.

—Adlai E. Stevenson Jr.

Appendix

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APPENDIX

The issuance of ethics advisory opinions (EAOs) is the primary means by which the Texas Ethics Commission interprets the statutes over which it has regulatory and interpretive authority. The opinions give an interpretation and more detailed explanation of ethics and financial disclosure laws. More than 482 opinions had been adopted as of December 2008. This appendix contains brief summaries of only those opinions that are referenced in the body of this guide; therefore, the EAO numbers will not be comprehensive.

These summaries are meant to briefly explain the questions and answers discussed in the opinions. The text is excerpted from the actual text of the EAOs. For a full understanding of the advisory opinion, please refer to the full opinion itself.

If you want the actual text of any opinion, you may contact the commission at (512) 463-5800 or the Senate Research Center at (512) 463-0087 and one will be provided. Additionally, the texts of the opinions are accessible on the commission website at www.ethics.state.tx.us.

Statements and interpretations of the law presented herein are not intended to substitute for the opinions of legal counsel or to act as formal legal advice.

If the reader identifies questions concerning the application of the law described in this book to personal fact situations, he or she is advised to contact an attorney or the commission. The commission is authorized to provide informal legal advice or, upon request, to render a formal advisory opinion pertaining to the fact situation presented. The commission may be reached at (512) 463-5800.

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Ethics Advisory Opinions

EAO-1: Who must file a personal financial disclosure statement?

Summary: “Every state officer” must file an annual financial disclosure statement.

EAO-6: Determination to Accept or Refuse a Political Contribution.

Summary: The determination to refuse a political contribution and the return of a political contribution are distinct acts for purposes of Title 15 of the Election Code. Once a determination to refuse a contribution has been made, the contribution must be returned within 30 days after the deadline for filing a report for the reporting period during which the contribution is received.

EAO-7: Whether a person filing a report under Title 15 of the Election Code may substitute a form for the form prescribed by the commission.

Summary: A person filing a report under Title 15 of the Election Code may not substitute a form in place of the prescribed form or a page in place of a page of the form adopted by the commission unless the commission has approved the use of the substitute form. For an attachment to be approved, the attachment must be of the same paper size as the prescribed form. The information must appear on the attachment in substantially the same format as it would have appeared on the prescribed form.

EAO-8: Interpretation of confidentiality provision set out in Section 571.140 of the Government Code.

Summary: A person who intends to file a sworn complaint with the commission may discuss with the press or the public the fact that he intends to file a complaint and the contents of the proposed complaint.

A person who has filed a sworn complaint with the commission may discuss with the press or the public the fact that he has filed a complaint and the contents of the complaint.

The commission must give notice of a sworn complaint to the respondent within

14 days after the commission receives the complaint, and as part of that notice, the commission must identify the complainant and the nature of the complaint.

The respondent to a sworn complaint filed with the commission may discuss the fact that the complaint has been filed and the contents of the complaint.

The commission may release to the public the contents of a sworn complaint, including the name and address of the complainant, if that information is entered into the record of a formal hearing or a judicial proceeding.

EAO-12: Legality of a legislator accepting a hunting trip paid for by a lobbyist and legality of a lobbyist providing a hunting trip to a legislator.

Summary: A person required to register as a lobbyist may not provide, and a legislator may not accept from a person required to register as a lobbyist, transportation and lodging in connection with a hunting trip. Subject to certain monetary limitations and reporting requirements, a lobbyist may provide, and a legislator may accept, food in connection with a hunting trip and a place to hunt. A legislator may accept food in connection with a hunting trip and the provision of a place to hunt if the person providing such food and entertainment is present.

EAO-13: Use of political contributions to purchase a vehicle to be used for campaign or officeholder purposes.

Summary: A candidate or officeholder may use political contributions to purchase an automobile to be used for campaign or officeholder purposes.

An asset purchased in whole or in part with political contributions is subject in its entirety to the restrictions set out in Title 15 of the Election Code. A candidate or officeholder may not, under Title 15 of the Election Code, remove a portion of the asset from those restrictions by paying for a portion of the asset with personal funds. State Ethics Advisory Commission Opinion No. 3 (1984), which concluded that such bifurcation was permissible, is hereby overruled.

EAO-17: Whether a legislator may accept a fee for a speaking engagement and accept reimbursement for travel, food, and lodging in connection with the event.

Summary: A legislator may not accept a fee for a speaking engagement that

would not have been requested but for the legislator's official position or duties. A legislator may accept reimbursement for transportation and lodging expenses incurred in connection with a speaking engagement at a conference or similar event. At such an event, a legislator may accept meals or reimbursement for actual expenses for meals.

EA0-18: Whether a nonprofit organization may pay for the transportation, meals and lodging of a legislator invited to address the organization.

Summary: Neither Section 305.024 of the Government Code nor Section 36.07 of the Penal Code precludes a nonprofit organization from paying the necessary transportation, meals, and lodging expenses for a member of the legislative or executive branch to speak at a conference or similar event hosted by the organization if the member's participation is more than "merely perfunctory." If the nonprofit organization is registered under Section 305.005, these expenses must be reported.

EA0-19: Whether Section 36.07 of the Penal Code prohibits a public servant from soliciting a payment or agreeing to a payment to a tax-exempt organization in return for a speaking engagement related to the public servant's official position.

Summary: Section 36.07(a) of the Penal Code prohibits a public servant from accepting or soliciting a fee for speaking if the public servant would not have been requested to speak but for his official position or duties. The prohibition extends to a request for or acceptance of a payment made to a third party if the speaker agrees to speak in exchange for such payment.

EA0-25: Use of political contributions to purchase electronic equipment for official use in a judge's courtroom or chambers.

Summary: A judge may use political contributions to purchase electronic equipment for official use in the judge's courtroom or chambers but may not convert the asset to personal use. The asset would be subject to the various provisions of Title 15 of the Election Code applicable to an asset purchased with political contributions.

EA0-28: Financial disclosure statements: who must file, what information must be included, and related questions.

Summary: Financial disclosure statements that are filed in 1992 must include information about the previous year's financial activity, but no penalty attaches to any activity that was not prohibited under the law in effect at the time that activity occurred. Any service as a state officer during the period between and including January 1 to April 30 of the year in which the statement has to be filed activates the filing requirement.

The commission is authorized to adopt a financial disclosure form, which must include information required by the legislature. It is immaterial that the information required is set out in the Penal Code rather than Chapter 572 of the Government Code. Where the statute specifically requests information only about the "state officer," he is not required to provide similar information concerning his spouse or dependent children. A person filing a financial disclosure statement must include a description of his employment position on the form.

Chapter 572 of the Government Code does not contain civil or criminal penalties for violations of the code of conduct set out in Section 572.029. Failure to timely file a financial disclosure statement is punishable by a fine of the commission. Failure to file a statement at all is a Class B misdemeanor.

EAO-29: Reporting requirements for the waiver of a symposium registration fee granted to certain members of the legislature and a governmental task force.

Summary: A state officer is not required to report on his personal financial statement a gift required to be reported by the donor under Chapter 305 of the Government Code. The waiver of a fee is reportable as lobby expenditure under Chapter 305. If the fee covers items in different reporting categories, the fee should be apportioned and reported in the applicable categories.

EAO-30: Application of the lobby statute to an event sponsored by a nonprofit organization that features a golf tournament and the opportunity to win valuable prizes, and related questions.

Summary: A person required to register as a lobbyist may make a lobby expenditure for transportation between a local airport and the site of a local golf tournament. A state officer is not required to report on his financial disclosure statement a prize awarded by an organization required to register as a lobbyist. Expenditures reported under Section 305.0062(a)(8) of the Government Code need not be reported under any other section of Chapter 305.

EA0-31: Whether the lobby statute prohibits a private company from making certain donations or expenditures for the benefit of state agencies or state universities.

Summary: Chapter 305 of the Government Code does not apply to gifts made to a state agency rather than to individual officers or employees of a state agency. Whether a particular agency has authority to accept a gift is governed by other law, over which the commission has no interpretive authority.

Expenditures for an educational program presented to employees of a state agency in their capacity as state employees would not be expenditures reportable under Chapter 305 of the Government Code if the program primarily benefits the agency rather than the individual.

State colleges and universities are “state agencies” for purposes of Government Code, Chapter 305. A private company that purchases meals for employees of a state college or university is engaging in lobby activity if the company’s purpose in purchasing the meals is to communicate to influence action by the college or university.

EA0-36: Acceptance of a plaque by an officer of an executive branch agency.

Summary: As a general rule, the receipt of a plaque could not be reasonably regarded as pecuniary advantage and is therefore not a benefit for purposes of Chapter 36 of the Penal Code.

EA0-40: Whether a legislator is required to register as a lobbyist if he communicates with the officers and employees of a regulatory agency but neither receives compensation nor expends any money.

Summary: A legislator who received no compensation or made no expenditures in connection with communications to agency officers or employees in regard to a pending permit application would not be subject to registration or reporting under Chapter 305 of the Government Code.

EA0-41: Whether a legislator may provide legal services to a special-purpose district.

Summary: The statutes amended by Senate Bill 1 of the 72nd Legislature do not prohibit a legislator from accepting employment from a special district.

EAO-45: Whether Section 255.003 of the Election Code prohibits the use of a school district's internal mail system for the distribution of political advertising.

Summary: An officer or employee of a school district may not use or authorize the use of school personnel or equipment for the distribution of political advertising.

EAO-47: Whether a candidate may give surplus funds to charity.

Summary: An expenditure of political contributions for one of the purposes set out in Section 254.204 of the Election Code is not a personal use of political contributions under Title 15.

EAO-50: Application of EAO-13 (1992) to the lease of a car.

Summary: EAO-13 (1992) applies to items leased with political contributions as well as items purchased with political contributions. Before June 4, 1992, the date Ethics Advisory Opinion No. 13 was issued, reliance on State Ethics Advisory Commission Opinion No. 3 (1984) was appropriate.

EAO-54: Whether an employee or official of a state agency who delivers a speech to a nonprofit organization may accept lunch from the organization in connection with the event.

Summary: An employee of a state agency who delivers a speech and accepts lunch provided in connection with the speech is not prohibited from accepting the meal by Chapter 36 of the Penal Code.

EAO-57: Whether a public servant may accept a free membership in a lobby organization.

Summary: A public servant may not accept free membership in an organization as consideration for a speech.

EAO-60: Whether a \$60 meal or a \$160 deer rifle is a benefit.

Summary: Both a \$60 restaurant meal and a \$160 deer rifle are benefits. A benefit does not constitute a bribe, however, if it is not offered or accepted as consideration for some official act on the part of a public servant.

A registrant filing a report under the lobby law may claim his Fifth Amendment privilege in response to specific questions if providing the information would tend to incriminate the registrant. The registrant must claim the privilege in response to particular questions, not in a blanket refusal to furnish any information.

EA0-61: Whether promotional or commemorative items of minimal value are benefits prohibited by Chapter 36 of the Penal Code.

Summary: “Benefit,” for purposes of Chapter 36 of the Penal Code, does not include promotional or commemorative items of minimal value such as caps, coffee mugs, tee shirts, and key rings if such items are unsolicited and not offered or accepted in exchange for any action or inaction on the part of a public servant.

EA0-62: Acceptance of gifts by state agencies and their officers or employees.

Summary: “Benefit,” for purposes of Chapter 36 of the Penal Code, does not include small amounts of food that a donor delivers infrequently to a public servant at a government office as long as the food is unsolicited and is not offered or accepted in exchange for action or inaction on the part of a public servant. Whether food in a particular case is a benefit is a fact question. The commission recommends that public servants exercise good judgment and caution in these matters.

EA0-63: Authority of the governor to accept certain gifts.

Summary: The governor may accept gifts from visiting dignitaries on behalf of the state. “Benefit,” for purposes of Chapter 36 of the Penal Code, does not include the following items as long as they are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of a public servant: promotional or commemorative items such as caps, coffee mugs, tee shirts, and key rings; fresh-cut flowers given to a public servant at a public appearance; and perishable foods delivered infrequently and in small amounts to a government office or given to a public servant at a public appearance.

A state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a benefit. The employee may accept tuition, food, transportation, and lodging at such a seminar only to the extent to which the state would pay for tuition, food, transportation, and lodging in

connection with the seminar. In that case, the benefit would be to the state and neither Chapter 36 of the Penal Code nor Chapter 305 of the Government Code would apply.

EA0-64: Whether a lobbyist may provide food and beverages at a reception to members of the legislative and executive branches without violating Chapter 36 of the Penal Code.

Summary: Food and beverages provided at a reception are not prohibited benefits under Sections 36.08 and 36.09 of the Penal Code if the person providing the food and beverages is present at the reception and if the donor or donee, as applicable, complies with any applicable reporting requirement.

EA0-66: Whether a state agency may accept and pass on to its employees discount coupons to an amusement park.

Summary: “Benefit” under Chapter 36 of the Penal Code does not include promotional discount coupons, as described in this opinion, that are delivered to state agencies for distribution to agency employees. The lobby statute does not apply to the delivery of such coupons if the donor’s purpose is not to influence agency action but to attract business from state employees in their private capacity.

EA0-67: Reporting requirements for a lobbyist’s provision of a booklet given at no charge or sold at cost to members of the legislature.

Summary: A registered lobbyist is not prohibited from giving free books to legislators, but a registrant is prohibited from giving, and a legislator from accepting, “an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year.” The lobbyist must report any such gift. The lobbyist should report the greater of the fair market value of the books or the actual cost of developing, writing, producing, and distributing the books. A registered lobbyist is not prohibited from selling books to legislators for the actual cost of writing, developing, publishing, and distributing the books. Such a sale is not a “gift” and would not have to be reported under the lobby statute.

EA0-68: Whether an officeholder may make a campaign expenditure or officeholder expenditure to purchase and maintain an automobile.

Summary: It is not illegal for an officeholder or candidate to purchase a car with political funds for the purpose of making campaign appearances in parades. Nor is it illegal to use political funds to maintain and insure a car used for such purposes. The car may not be used in a way that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. Appearance in a parade may be an activity in connection with a public office, although we think this is most unlikely in the case of a judicial office.

EAO-69: Whether a state college or university is a “person” for purposes of Chapter 36 of the Penal Code.

Summary: A state college or university is a “person” for purposes of the Penal Code. Therefore, various prohibitions in Section 36.08 of the Penal Code on public servants’ acceptance of benefits from any “person” apply to the acceptance of benefits from state colleges and universities. As a general rule, tickets to intercollegiate athletic events are benefits. For a state college or university to satisfy the “guest” exceptions in Section 36.10 of the Penal Code in regard to athletic events, an individual officer or employee must have some direct contact with the legislator, and the guest and host must be in reasonable physical proximity and have easy access to each other during the game.

EAO-71: Whether a charitable contribution by a registered lobbyist is a reportable lobby expenditure.

Summary: A registered lobbyist is not required to report a contribution to a charitable organization as a lobby expenditure even if the charitable organization uses part of the contribution for one of the purposes set out in Section 305.006(b), Government Code, as long as the lobbyist does not earmark his contribution for that purpose.

EAO-75: Whether a city’s provision of certain goods and services to legislators is prohibited under Chapter 36 of the Penal Code.

Summary: A city is a “person” for purposes of the Penal Code. Therefore, a legislator may not accept a “benefit” from a city unless one of the exceptions set out in Section 36.10 of the code is applicable. Unlimited free parking at a city airport or in metered spaces is a benefit. Unlimited free use of golf and tennis facilities is a benefit.

EA0-76: Whether it is permissible for a legislator to use political contributions to pay utility bills incurred in a house in Austin owned by the legislator.

Summary: It is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay utility bills for a house in Austin that the member owns.

EA0-77: Whether corporate funds may be used to print and mail postcards advocating the election of judges who won a local bar poll.

Summary: A corporation may not pay for the printing or mailing of postcards that advocate the election of judges who won a local bar poll. Such postcards would be “political advertising” and the name of an individual or group that entered into an agreement to have the cards printed would have to appear on the postcards as part of the disclosure statement.

EA0-78: Whether a member of the legislature may use political contributions to pay for business and personal phone calls not involving state business.

Summary: A member of the legislature may not use political contributions to pay for business and personal phone calls not involving state business.

EA0-80: Acceptance of reimbursement for airline tickets by a state representative.

Summary: Payment to a state representative personally in the amount of a ticket paid for out of political funds would, in the circumstances described, be prohibited. Payment to a state representative personally in the amount of the cost of a ticket paid for out of personal funds would be a prohibited benefit.

As long as a payment is not given as consideration for the state representative's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, the state representative may accept an officeholder contribution or a campaign contribution in the amount of the cost of the ticket.

EA0-81: Application of Chapter 305 of the Government Code to expenditures for food consumed by a legislator's spouse and to expenditures for lodging used by a legislator's spouse and not the legislator.

Summary: Lobby expenditures for food consumed by a legislator's spouse must be reported under Section 305.006(b)(2) and Section 305.0062, but not under Section 305.0061(b). Although there are exceptions to the prohibition on lobby expenditures for lodging, those exceptions would not be applicable to lodging used by a legislator's spouse in the circumstances described.

EAO-83: Whether the prohibition on the acceptance of honoraria set out in Section 36.07 of the Penal Code applies to the acceptance of payment in 1992 for work performed in 1991.

Summary: Section 36.07 of the Penal Code permits payment for services if a contract for such services was entered into and performed at a time when it was permissible for a state employee to accept payment for such services.

EAO-87: Whether a registered lobbyist may give works of art to members of the legislature.

Summary: A registered lobbyist must report a lobby expenditure in the form of a work of art for a legislator as a "gift" under Chapter 305 of the Government Code.

EAO-88: Whether a state university may pay expenses for legislators-elect in connection with a conference for legislators and legislators-elect.

Summary: Non-incumbent legislators-elect are not "members of the legislature" for purposes of Section 36.08(f) of the Penal Code. A state university using state funds to furnish a speaker to provide information to state legislators relevant to their official position is not providing a benefit to the legislators for purposes of Chapter 36 of the Penal Code.

EAO-90: Application of Chapter 36 of the Penal Code and Chapter 305 of the Government Code to use of a corporate deer lease by members of the executive and legislative branches.

Summary: In providing the use of a deer lease to a member of the legislative or executive branch, a corporation may subject itself or its officers or employees to registration and reporting requirements of Chapter 305, Government Code, even if no business related matters are to be discussed.

For a corporation to satisfy the “guest” requirement under Section 36.10 of the Penal Code there must be a person present whose position, authority, or conduct could create corporate liability for exemplary damages.

EAO-94: Whether Texas Wing, Civil Air Patrol, may invite certain state officers to a conference and, if so, whether Texas Wing would be required to register as a lobbyist under Chapter 305 of the Government Code.

Summary: Texas Wing may provide lodging to members of the executive branch only if the expenditures are not lobby expenditures and only if the requirements of the “guest” exception in Section 36.10 of the Penal Code are met. Texas Wing may provide a banquet to members of the executive and legislative branches if the requirements of the guest exception are met and if the requirements of the lobby statute, if applicable, are met.

EAO-95: Whether state employees may use state credit cards for personal expenditures.

Summary: A credit card issued to a public servant under a program where the card is issued at the direction and under the control of the State of Texas for state purposes may not be used for personal expenditures or any other type of expenditure not reimbursable as a state business expense under state law.

EAO-97: Whether a member of the legislature may accept an engraved clock in appreciation for a speech.

Summary: A legislator may not accept an engraved clock in appreciation for a speech, even if the donor is required to report the gift under the lobby statute, if the legislator would not have been asked to give the speech but for his official position.

EAO-100: Acceptance of prizes by state employees and related questions.

Summary: Whether a state employee may accept a prize depends on the nature, value, and context of the prize. The provisions in the lobby statute and the Penal Code apply to gifts and expenditures made both during working hours and outside of working hours.

EAO-102: Whether an advertisement in a youth magazine to congratulate a

sports team purchased by a member of the legislature must indicate that it is political advertising.

Summary: In most circumstances, an advertisement congratulating a sports team that identifies a candidate or public officer as such is political advertising and must contain the information required by Election Code Section 255.001.

EAO-104: Whether an officeholder may use political contributions to pay dry cleaning and laundry bills.

Summary: Legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin.

EAO-111: Use of political contributions to pay transportation and lodging expenses of an officeholder's spouse.

Summary: A candidate may use political contributions to pay the travel expenses of his or her spouse if the spouse is campaigning for a candidate. An officeholder may use political contributions to pay for his or her spouse's travel if the spouse's travel is in connection with the performance of duties or responsibilities of the officeholder.

EAO-116: Whether a candidate or officeholder may reimburse his political funds for personal use of an asset purchased with political contributions; whether a candidate or officeholder may use personal assets for political purposes; and related questions.

Summary: A candidate may not convert assets purchased with political contributions to personal use. An item is not converted to personal use if the candidate reimburses his political funds on the basis of the reasonable value of any personal use.

The use of a personal asset for political purposes is not required to be reported under Title 15. A candidate may reimburse his personal funds from political contributions for use of personal assets for political purposes.

A corporation would be making a political contribution if it permitted the use of corporate assets for campaign or officeholder purposes.

EAO-117: Whether a legislator who is a lawyer may be employed by a law firm that represents clients before either a state agency or a school district.

Summary: There is nothing in the laws subject to interpretation by the commission that prohibits a legislator from being employed by a law firm in which other lawyers represent clients before state agencies. Nor is there anything in those laws that prohibits a legislator from representing clients before a school district. A legislator who represents clients before a state agency is subject to certain restrictions.

EAO-118: Acceptance of rides, food, coffee, and seminar tuition by agency employees; acceptance of gifts from agency board members by agency employees.

Summary: A state employee or an employee of a local government body may accept a local ride in the circumstances described.

The prohibition set out in Section 36.08(a) of the Penal Code does not apply to a gift from a board member to an employee subject to the direction of the board. A cup of coffee is not a benefit for purposes of Chapter 36 of the Penal Code.

A state agency, as opposed to an individual officer or employee of the agency, may accept a gift of food only if the agency can use the food in carrying out its powers and duties. Distribution of food to agency employees would generally not be one of an agency's powers or duties. A state agency may accept a tuition waiver and food at a seminar for a state employee if it would be permissible for the state agency to pay such expenses.

EAO-119: Lobby reporting requirements in connection with a luncheon to which all members of the legislature and other elected state officers are invited.

Summary: The lump sum reported under Section 305.0062(a)(8) of the Government Code is made up of the kinds of expenditures that are required to be reported under Section 305.006. Lobby expenditures incurred in connection with the preparation or presentation of a meal are reportable under the category for "food and beverages."

EAO-120: Whether a legislator may accept a free subscription to a magazine.

Summary: A subscription to a magazine may be a benefit if it is of more than minimal value.

EAO-123: Whether a state legislator may work for a city as a paid lobbyist to influence the state legislature.

Summary: A legislator may not accept payment from a city for lobbying the state legislature.

EAO-125: Whether a district judge may accept \$500 for speaking at a conference.

Summary: Whether the prohibition on honoraria applies to a payment to a judge who gives a speech is a fact question and depends on whether the judge would not have been asked to provide the speech but for his official status. The statements of the group sponsoring the speech about its reasons for asking the judge to speak would be one factor for a judge or jury to consider in analyzing whether a payment for the speech was a prohibited honorarium.

EAO-129: Whether an officeholder may use political contributions to pay the expenses of operating and maintaining an airplane for officeholder purposes.

Summary: An officeholder may use political contributions to pay the expenses of operating and maintaining his personal airplane for officeholder purposes. Expenses may be prorated between officeholder use and personal use.

EAO-130: Acceptance of gifts by a state agency, and acceptance of gifts by individual officers and employees of a state agency.

Summary: Acceptance of gifts by a state agency is governed by laws that are not subject to interpretation by the commission. Whether a state employee may accept a gift depends on the status of the donor and the donee as well as the nature of a gift.

EAO-134: Whether it is a violation of Section 39.01(a)(2) of the Penal Code for a state employee to use state-owned telephones and other equipment for personal purposes.

Summary: The incidental use of state telephones by state employees to place

personal local calls that does not result in additional costs or damage to the state is not a “misapplication” of state property for purposes of Section 39.01(a)(2) of the Penal Code.

EAO-139: Whether the chair of a legislative committee may buy gifts for legislative staff members and committee members.

Summary: Gifts from legislators to legislative staff members and gifts from committee chairs to committee members may be permissible under the Penal Code exception for gifts given on the basis of an independent relationship. (Penal Code, Section 36.10(a)(2))

EAO-144: The application of the ethics laws to the production of a television program.

Summary: A commercial sponsor who provided funding for a television program for a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution. Because officeholder contributions from corporations and certain other entities are generally prohibited, these entities could not sponsor such a program. If a paid television broadcast supports or opposes a candidate for nomination or election to a public office or supports or opposes a public officer, the show must include the information required by Section 255.001 of the Election Code.

EAO-146: Whether a state representative may use political contributions to reimburse himself for payments from personal funds on a condominium in Austin that the state representative purchased in 1991.

Summary: A state representative may use political contributions to reimburse himself for payments from personal funds on a condominium that the state representative purchased in 1991. Reimbursements may be made for payments made after January 1, 1992, only if the state representative complied with the reporting requirements set out in Section 253.035(h) of the Election Code.

EAO-147: Whether it is permissible for a state employee to use a state-issued credit card to pay for a hotel bill, even if the total bill exceeds the amount reimbursable by the state.

Summary: A public servant's use of a state-issued credit card for any type of expense other than a state business expense is a misapplication of state property and may violate Section 39.01 of the Penal Code. It is not a misapplication of state property to use a state-issued credit card for a state business expense in accordance with rules established by agencies authorized to control the card's use.

EAO-148: Whether a state legislator may receive a salary for working for a city, and whether a state legislator may receive a fee from a state college or university for teaching if the fee comes from a private, rather than a public, funding source.

Summary: As long as a state legislator is providing services to a city in a capacity other than as a legislator and as long as the prohibition on honoraria is not applicable, a state legislator may accept a salary for working for a city. Whether funds come from a public or private source is irrelevant to the application of the honorarium provision. Under the prohibition on honoraria, a legislator could not accept a fee for teaching if the legislator would not have been asked to speak but for his position as a legislator, regardless of whether the payment comes from a public or private source.

EAO-149: Whether a successful candidate may use political contributions left over after a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged individuals.

Summary: An officeholder may use political contributions left over from a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens without violating the prohibition on conversion of political contributions to personal use.

EAO-150: Whether an educational institution may make a donation to a charity in honor of a state senator who is invited to give an address on education issues.

Summary: A state senator may not request that a payment be made to a third party in consideration for a speech by the senator. Nor may a state senator agree that a payment will be made to a third party in consideration for a speech by the senator. A third party may make a charitable donation in a state senator's name in appreciation for a speech by the state legislator as long

as the payment is not the result of an express or implied agreement with the legislator.

EA0-151: Permissible use of political contributions accepted before September 1, 1983.

Summary: Political contributions accepted before September 1, 1983, are not subject to the prohibition on personal use of political contributions.

EA0-155: Whether a private association may hire a state legislator as an employee.

Summary: A legislator may not accept a salary from a private association for carrying or “killing” bills in the legislature. The restrictions set out in Section 572.052, Government Code, apply to a legislator’s representation of a person in a grievance proceeding before a public university, but not to a legislator’s representation of a person in a grievance proceeding before a public junior college.

EA0-156: Whether it is permissible, under the laws subject to interpretation by the commission, for a law firm of which a legislator is a member to contract with another law firm to assist with the collection of delinquent property taxes for various local taxing units.

Summary: The provisions subject to interpretation by the Ethics Commission do not prohibit a legislator or his law firm from entering into a contract to assist with the collection of delinquent property taxes for a local taxing authority.

EA0-157: Whether a state representative may use political contributions to pay for Spanish lessons.

Summary: A state representative whose district has a large Hispanic population may use political contributions to pay for Spanish lessons in order to communicate with his or her constituency. Such expenditures would not constitute a prohibited personal use of political contributions under Section 253.035 of the Election Code.

EA0-164: Whether a state agency may allow state employees to use state time or equipment to look for other employment.

Summary: As a general rule, a state employee would not be serving an agency purpose by searching for other employment. An individual state employee who is using state resources to search for a new job in a way that has been expressly authorized by the agency's board would not, as an individual, be misapplying state property.

EAO-169: Disposition of political contributions after the death of the person to whom the contributions were made.

Summary: Surplus funds of a deceased officeholder may be contributed to a candidate as long as disposition of the funds is permissible under any applicable probate laws.

EAO-171: Whether a part-time municipal judge may use the title of judge in political advertising in connection with his or her candidacy for either district or county court-at-law judge.

Summary: Under Section 255.006 of the Election Code, a person may not suggest in political advertising or in a campaign communication that the person holds an office the person does not currently hold.

EAO-172: Whether a legislator may use state computer equipment and employees to make entries about personal or political business on a computer schedule, and whether a state employee may conduct transactions involving officeholder contributions and expenditures.

Summary: A legislator's use of state resources and employees to keep track of the legislator's overall schedule, including personal and political appointments, is not a misapplication of things of value belonging to the government under Penal Code Section 39.01(a)(2). However, a state employee should not be used as a political or personal scheduler to make personal appointments or organize political events.

The use of state equipment or state employees' work time to handle campaign contributions or expenditures is a misapplication of state property. Under certain circumstances, the use of state resources to handle officeholder contributions and expenditures may be appropriate. Because the distinction between campaign matters and officeholder matters is not always clear, a legislator should be cautious in using state employees to handle any political contributions and expenditures.

EAO-173: Whether the prohibition against acceptance of an honorarium, as set out in Section 36.07 of the Penal Code, is applicable to a public servant in various circumstances.

Summary: Texas law prohibits a public servant from accepting an honorarium for services that the public servant would not have been asked to perform but for his or her official position or duties. The location of a speech, the nature of the audience, or the speaker's expertise may be factors to consider in determining whether an honorarium is a prohibited one, but if the public servant would not have been asked to speak but for his official status, a payment for speaking would be a prohibited honorarium.

EAO-174: Whether a senator may serve on the board of trustees of a private college.

Summary: The laws subject to interpretation by the commission do not prohibit a senator from serving as a trustee on the board of a private college that receives state-funded tuition equalization grants. However, a legislator is governed by the laws regarding conflicts of interest that are set out in Chapter 572, Government Code, and is subject to the restrictions that those laws impose.

EAO-178: Whether a legislator may represent a client before a metropolitan transit authority.

Summary: In general, a legislator is not prohibited from accepting employment and receiving compensation for legitimate services performed in a capacity other than as a public servant.

EAO-182: Whether state employees may use state time and state resources to raise funds for charitable organizations.

Summary: In order for a violation of Section 39.01 of the Penal Code to occur, there must be both a "misapplication" of state resources and the misapplication must be made with intent to obtain a benefit or with intent to harm another. A use of state resources for charitable fundraising in compliance with Section 659.131, Government Code, would not be a misapplication of such resources. Nor would a use of state resources in connection with a charitable fundraising drive involve intent to obtain a "benefit" or intent to "harm" another as defined by Section 1.07(a) of the Penal Code.

EA0-183: Whether a newsletter that generally addresses issues about a local real estate market must bear a political advertising disclosure if it contains communications opposing a local measure, and related question.

Summary: Communications supporting or opposing candidates, officeholders, or measures that appear in a newspaper, magazine, or periodical do not constitute political advertising if the publisher receives no consideration for publishing them. If such communications appear in a publication other than a newspaper, magazine, or periodical, they constitute political advertising and must be accompanied by the political advertising disclosure information set out in Section 255.001, Election Code.

EA0-184: Whether Section 255.001 of the Election Code requires that a political advertising disclosure statement be printed on lapel stickers, pens, magnets, and emery boards produced for campaign purposes; whether an invitation to an “open house” held by two officeholders is required to carry the political advertising disclosure set out in Section 255.001, Election Code.

Summary: A political advertising disclosure statement is not required on lapel stickers, pens, magnets, or emery boards, nor on an invitation to an “open house” held by an officeholder.

EA0-186: Whether a recent amendment to Section 36.10 of the Penal Code will make a city’s provision of free parking to a member of the legislature permissible under Section 36.08 of the Penal Code and, if so, whether there are any applicable reporting requirements.

Summary: After September 1, 1994, a city’s provision of free parking for legislators on any property or at any facility “owned, leased, or operated” by the city will not be prohibited by Section 36.08(f) of the Penal Code. Legislators are not required to report a city’s provision of free parking on a personal financial statement filed under Chapter 572 of the Government Code.

EA0-187: Whether it is permissible for Texas Department of Criminal Justice employees to accept gratuities from communities or community groups in which department facilities are located.

Summary: The gift prohibitions in Section 36.08 of the Penal Code are applicable to gifts from cities and counties. Those prohibitions do not apply to

gifts routinely given to new residents of a city or county by a community group such as a chamber of commerce.

EAO-188: Whether a legislative advertising disclosure statement is required in particular circumstances.

Summary: A photocopy or reprint of a newspaper editorial supporting, opposing, or proposing legislation does not need to include a legislative advertising disclosure statement. The legislative advertising disclosure requirement is triggered whenever legislative advertising is printed, published, or broadcast pursuant to a contract or other agreement, regardless of the amount of consideration offered or received in connection with the agreement. A legislative advertising disclosure is required only for communications that support, propose, or oppose specific legislation; communications that merely support or oppose a general point of view on a given topic do not need to carry the disclosure. The disclosure may be required on communications whether or not the legislature is currently in session.

EAO-190: Whether a member of the state legislature may ask state employees to prepare and mail Christmas cards to constituents.

Summary: A member of the legislature may not use the work time of state employees to prepare and mail Christmas cards to the legislator's constituents. A member of the legislature may use political contributions to purchase, prepare, and mail Christmas cards.

EAO-191: Whether a member of the state legislature may accept a loan of computer equipment from a private company.

Summary: A legislator may accept a loan of computer equipment from a private company only if acceptance is permissible under Section 36.10 of the Penal Code and Section 253.094 of the Election Code.

A legislator may accept as an officeholder contribution a loan of computer equipment to be used to train constituents to obtain government information. A legislator may not, however, accept an officeholder contribution from a corporation. State resources may not be used in connection with computer training unless the training constitutes a state purpose. Equipment accepted as an officeholder contribution may not be converted to personal use.

EAO-192: Whether a state employee may accept outside employment with a private company to consult with and assist the company in developing training programs and materials.

Summary: In addition to agency policy and laws applicable to specific agencies, Sections 36.07 and 36.08 of the Penal Code and Chapter 572 of the Government Code may restrict outside employment by state employees.

EAO-194: Whether a legislator who has either a “controlling interest or substantial interest in a broker-dealer” may represent the broker-dealer before a state agency even if the legislator is not paid specifically for that representation.

Summary: Whether a particular situation involves compensation for representation before a state agency for purposes of Section 572.052 of the Government Code depends on the exact nature of a specific financial arrangement.

EAO-195: Whether a local elected official may reimburse his personal funds from political contributions.

Summary: An elected official may use political contributions to reimburse his personal funds for officeholder expenditures if the elected official reported the expenditures in accordance with Section 253.035(h) of the Election Code.

EAO-196: Whether a person appointed by a judge to perform the duties of a district attorney under Section 87.017(a), Local Government Code, and who is a candidate for that office, may describe himself as the holder of the office of district attorney in campaign literature.

Summary: Under Election Code, Section 255.006, a candidate appointed pursuant to Section 87.017(a), Local Government Code, to perform the duties of a district attorney may not describe himself in campaign literature as the holder of the office of district attorney.

EAO-201: Whether it would be a violation of any of the laws interpreted by the commission for a member of the legislature to be a stockholder/owner of a home-health care agency that seeks Medicare, but not Medicaid, reimbursement.

Summary: The statutes within the commission's jurisdiction do not prohibit a legislator from owning any particular kind of business. There could be a situation in which a legislator's interest in a home health care agency would require the legislator to abstain from voting on a measure.

EAO-202: Whether reasonable reliance on a rule adopted by the commission has the same effect as reliance on an advisory opinion.

Summary: A person acting in reasonable reliance on a rule adopted by the commission may rely upon such a rule as if it were an advisory opinion.

EAO-204: Disposition of state reimbursement for use of a car purchased with political contributions.

Summary: If an officeholder seeks and obtains state reimbursement for a use of a car purchased with political contributions, the money paid to the officeholder as reimbursement for use of the car must be paid by the officeholder into the officeholder's political fund.

EAO-205: Whether a member of the legislature may enter into "conversations or negotiations for future employment" with a state agency, a local governmental body, or a nongovernmental entity that does business with the state.

Summary: Nothing in the laws subject to interpretation by the commission specifically addresses the issue of a legislator engaging in negotiations for future employment. The bribery law would prohibit a legislator from accepting or soliciting future employment in exchange for some official action on the part of the legislator during the remainder of his term of office.

EAO-206: Source of funds that may be used to pay a fine assessed by the commission under Section 254.042 of the Election Code (civil penalty for late report).

Summary: Payment of a fine for filing a late report with the commission is a political expenditure.

EAO-209: Whether it is permissible to use political contributions to purchase, prepare, and mail congratulatory letters to parents upon the birth of a child or certificates to students upon graduation from high school or college.

Summary: It is permissible for an officeholder to use political contributions to purchase, prepare, and mail congratulatory letters to parents upon the birth of a child and certificates to students upon graduation from high school or college. The attorney general is the appropriate source for determining whether the constitution permits the use of state resources for such purposes.

EAO-210: Whether a particular bumper sticker is in violation of Section 255.006 of the Election Code.

Summary: The particular bumper sticker at issue in this opinion does not violate Section 255.006 of the Election Code. We caution that a candidate who is not an incumbent in the office sought should avoid uncertainty about the application of Section 255.006 by using words such as “for” before the name of the office sought, or “elect” before the candidate’s name.

EAO-211: Whether a brochure that lists the duties of a justice of the peace and that bears the name, courthouse address, and courthouse phone number of a specific justice of the peace is political advertising that may not be paid for with public funds.

Summary: The text of the brochure merely describes the duties of the justice of the peace court. The name of the incumbent justice of the peace appears only on the letterhead, and this is not done in an unduly conspicuous way or in a way that would lead one to believe that the purpose of the brochure was to support the incumbent. No facts are indicated that would lead the commission to believe that distribution of the brochure is campaign related. Therefore, we do not believe that the brochure provided for our inspection constitutes political advertising as that term is defined in Section 251.001(16) of the Election Code.

EAO-224: Whether an officeholder may invest political contributions by purchasing stock; by purchasing stock through a margin account; by purchasing commodity futures, stock options, junk bonds; or by making personal loans.

Summary: Nothing in Title 15 makes degree of risk a basis for concluding that a particular investment is or is not permissible. The only limit Title 15 places on a candidate’s or officeholder’s investment of political contributions is that an investment may not constitute a conversion of a political contribution to the personal use of the candidate or officeholder.

EAO-228: Whether a legislator may serve on the board of a private, nonprofit organization and, if so, whether the legislator may accept travel reimbursements and meals connected with service on the board from the private organization.

Summary: Section 36.08(f) of the Penal Code prohibits a legislator from accepting certain benefits. The acceptance of a meal, however, is permissible under several different exceptions to the prohibition. See Section 36.10(a)(6) (exception for non-cash items worth less than \$50), and Section 36.10(b) (exception for benefit accepted as a guest and reported if reporting required by other law), Penal Code. In addition, Section 36.07 of the Penal Code provides that a state employee may not accept an honorarium for services that the public servant would not have been requested to provide “but for the public servant’s official position or duties.” There is an exception to that prohibition for the acceptance of the expenses of food, transportation, and lodging in connection with “a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory...” That exception would apply to food and transportation expenses in connection with a board meeting as long as the legislator’s role on the board is more than “merely perfunctory.”

There is no general prohibition against a legislator serving on the board of a private entity. The legislator should be aware, however, of the restrictions in Chapter 36 of the Penal Code and in Chapter 572 of the Government Code. There may be laws outside of the commission’s jurisdiction that would be applicable. For example, Article III, Section 18, of the Texas Constitution prohibits a legislator from being interested in a contract with the state that was authorized by any law during a term for which he was elected. Questions about conflicts of interest related to laws not subject to interpretation by the commission should be addressed to the attorney general.

EAO-235: Whether a member of the legislature may accept free use of office space in a county-owned building offered by a county within the district the legislator represents.

Summary: Although both Chapter 36 of the Penal Code and Chapter 305 of the Government Code place restrictions on the types of gifts or donations a member of the legislature may accept, neither of those statutes prohibits a member of the legislature from accepting office space from a county.

EAO-236: Length of time a state officer must keep copies of financial disclosure statements and supporting documentation.

Summary: There is no specific legal requirement that an officer maintain copies of a financial disclosure statement filed with the commission. We recommend, nonetheless, that a filer keep a copy of a financial disclosure statement for at least two years after the deadline for filing the statement.

EAO-237: Whether a legislator may use political contributions to purchase furniture to use in an apartment in Austin.

Summary: A member of the legislature who does not ordinarily reside in Travis County may use political contributions to lease or purchase furniture for a residence in Travis County.

EAO-238: Whether Chapter 572, Government Code, requires a state officer to list assets held for him as a beneficiary of a blind trust on a personal financial disclosure statement.

Summary: Chapter 572 does not define the term “beneficial interest” as used in Section 572.023(b)(6), and the commission has not been asked to interpret the term. It is possible to interpret the term to refer to interests held by one person for the benefit of another, as a trustee holds property for the benefit of a beneficiary. See Black’s Law Dictionary 107 (6th ed. 1991) (“beneficial interest” as used in trust law). Subsection (b)(8), which is specifically directed at trust income and assets, prevails over Subsection (b)(6) in the case of any conflict in regard to a description of assets held in trust for a state officer as beneficiary.

EAO-239: Whether a legislator-elect may accept a donation of office space for use as a district office if the use will continue during the period covered by the moratorium on political contributions set out in Section 253.034 of the Election Code.

Summary: As long as a person subject to Section 253.034 accepts and receives a political contribution in the form of office space before the beginning of the moratorium on political contributions set out in Section 253.034, the person may continue to use the office space during the period covered by the moratorium.

EAO-244: Whether the governor-elect may donate political contributions to the state treasury.

Summary: An unrestricted donation of political contributions to the state treasury is not a conversion of those political contributions to personal use for purposes of Section 253.035 of the Election Code.

EAO-245: Whether a judge or a judicial candidate may use political contributions to pay state bar dues.

Summary: For judges required to be licensed to practice law in Texas, the payment of state bar dues is a purpose connected with the duties or activities of a judicial candidate or officeholder. Consequently, such judicial candidates and officeholders may use political contributions to pay state bar dues without violating Section 253.035, Election Code, the “personal use” prohibition.

EAO-248: Whether a member of the legislature may use political contributions to make payments during the 1995 legislative session on a condominium the legislator owns in Austin.

Summary: Section 253.038 of the Election Code, which prohibits the use of political contributions to make payments on a note for the purchase of real property, does not apply to payments for property purchased before January 1, 1992.

If political contributions are used to pay part of the purchase price of an asset, a proportional amount of any income from the asset is subject to the prohibition on personal use in Section 253.035 of the Election Code.

EAO-249: Whether a member of the legislature may use political contributions to pay for using an airplane owned by a corporation in which the legislator has an interest.

Summary: A member of the legislature may use political contributions to pay for transportation to and from Austin for legislative purposes. A payment from political contributions to a business in one of the categories listed in Section 253.041(a) must not exceed the amount necessary to reimburse the business for actual expenditures made by the business.

If a situation arises in which a payment from political contributions is subject to both the restriction in Section 253.041 and also the prohibition on corporate political contributions, the payment to the corporation must be in the amount reasonably necessary to reimburse the corporation for its expenses, neither more nor less.

EAO-252: Application of the laws under the jurisdiction of the Texas Ethics Commission to a situation in which the spouse of a member of the legislature receives payment from a registered lobbyist for “the performance of contractually agreed-upon work.”

Summary: The prohibitions in Section 36.08(f) of the Penal Code do not apply to a benefit accepted by a legislator’s spouse. The issue of who accepts a benefit is a fact question.

The prohibition on certain gifts in Section 305.024(a)(2) of the Government Code does not apply to fees for actual services rendered. Section 572.024 of the Government Code does not require a legislator to report fees received by the legislator’s spouse for services rendered by the legislator’s spouse.

EAO-254: Whether a legislator may use political contributions to supplement the salaries of state employees under the legislator’s supervision.

Summary: Nothing in Title 15 of the Election Code prohibits the use of political contributions to supplement the salaries of state employees. A salary supplement paid by a legislator to state employees who work for the officeholder is permissible under Section 36.10(a)(2) of the Penal Code.

EAO-258: Reimbursement from political contributions for political expenditures made from personal funds and reported as loans.

Summary: Although the technically correct way to report the use of personal funds is to disclose expenditures made from these funds on Schedule G of Form C/OH, a candidate who has reported his use of personal funds for political expenditures as loans to his campaign is not prohibited from reimbursing himself from political contributions in the amount of the personal funds spent for political purposes.

EAO-259: Application of the reporting requirements and restrictions in the lobby law to a lobbyist who makes expenditures for a spouse or friend who is a member of the legislative or executive branch of state government.

Summary: Expenditures for food and beverages are required to be reported under Chapter 305 of the Government Code only if the expenditures are made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

A lobby registrant may confer a gift in the form of transportation or lodging to his or her spouse, even if the spouse is a member of the legislative or executive branch. A lobby registrant may not confer a gift in the form of transportation or lodging to a personal friend who is a member of the legislative or executive branch unless one of the exceptions in Section 305.025, Government Code, is applicable.

EAO-260: Whether a legislator may use for personal purposes a laptop computer owned by the state.

Summary: It is a matter for the legislature, subject to constitutional limitations, to determine the appropriate uses for legislative resources. It is also up to the legislature to determine whether there are circumstances in which a member of the legislature may use for personal purposes computers owned by the state and reimburse the state for any costs to the state.

EAO-261: Whether county officials would violate Section 36.08 of the Penal Code by accepting food, transportation, and lodging in connection with a demonstration of computer equipment by a computer equipment vendor.

Summary: County officials (as well as public officials) may accept transportation and lodging necessary for attendance at a vendor's demonstration of equipment even though the vendor's representatives are not in the vehicles or hotels, if the vendor's representatives are present at the demonstration. For acceptance of meals to be permissible, the donor's representatives must be present at the meals.

EAO-263: Whether a corporation owned by a legislator's spouse may sell a tract of land to a purchaser who intends to construct improvements on the tract and lease them to the state.

Summary: None of the provisions subject to interpretation by the commission prohibit a corporation owned by a legislator's spouse from selling a tract of land that the purchaser intends to develop for lease to the state, provided that neither the corporation nor the legislator retains any interest in the property.

EA0-268: Whether an officeholder subject to Section 36.08(f) of the Penal Code may accept a waiver of membership fees in a private organization.

Summary: Waiver of a membership fee to a private club is a "benefit" for purposes of Chapter 36 of the Penal Code.

As a general rule, a candidate or officeholder could accept an offer to use the facilities of a private club for campaign or officeholder purposes. Such a contribution would not be permissible, however, if the club were incorporated. If a candidate or officeholder accepted the opportunity to use the facilities of a private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal purposes unrelated to his or her candidacy or to his or her duties or activities of office.

If a state agency or office accepted the opportunity to use the facilities of a private club for state business, it would be a misuse of government resources for such opportunities accepted on behalf of the state to be used for personal or campaign purposes.

EA0-273: Whether a member of the legislature may accept fees for public speaking.

Summary: Whether a member of the legislature may accept a speaking fee depends on the motivation of the person requesting that the legislator speak. Although the permissibility of any particular fee must be determined on a case-by-case basis, the fact that a legislator received fees for speaking before becoming a member of the legislature is certainly strong evidence that the legislator is a desirable speaker for reasons other than his status as a member of the legislature.

A legislator may accept expenses for travel, lodging, and meals in connection with a speaking engagement even if the honorarium provision prohibits the acceptance of a fee for the speaking engagement.

EAO-282: Whether Chapter 36 of the Penal Code prohibits city employees from accepting discounts from child care providers under a group discount program offered to personnel of large employers.

Summary: City employees may accept discounts from child care providers under a group discount program offered to personnel of large employers in the private as well as the public sector.

EAO-283: Whether a legislator may accept payment from a law firm for services rendered before the legislator held public office.

Summary: A legislator has asked about the permissibility of accepting payments from a law firm. At a time when he held no public office, the requester assisted a law firm in obtaining a contract to provide services to a school district and contracted to receive annual payments from the law firm during the life of the contract. The question raised is whether the requester may continue to accept the annual payments now that he is a member of the legislature.

Members of the legislature are subject to a general prohibition on the acceptance of “benefits.” Section 36.08(f), Penal Code. A salary or other payment is a “benefit,” but a legislator is expressly permitted to accept a payment “for which he gives legitimate consideration in a capacity other than as a public servant.” Section 36.10(a)(1), Penal Code. Therefore, a legislator may accept payment for services rendered to a law firm as long as the services were rendered in a capacity other than as a public servant.

EAO-287: Whether members of a legislative committee may accept meals, lodging, and transportation (in vans) from public universities and community colleges in connection with a committee visit to the universities and colleges.

Summary: Members of the legislature may accept food, transportation, and lodging from public universities and community colleges in connection with visits to the public universities and community colleges as long as representatives of the universities and community colleges are present during the visit.

EAO-289: Whether holiday greeting cards sent by an officeholder and paid for from political contributions must have a political advertising disclosure.

Summary: Holiday greeting cards sent by an officeholder and paid for with

political contributions are not required to contain a political advertising disclosure as long as the name and address of the officeholder sending the cards appear on the card itself or on the envelope.

EAO-294: Whether an officer or employee of a state agency is prohibited by Chapter 36 of the Penal Code from receiving consideration for teaching a course at a state university.

Summary: The honorarium provision does not prohibit a state officer or employee from accepting payment for teaching a course if the individual was asked to teach because of his expertise and not because of his official status. A state officer or employee may accept payment from a person subject to his agency's regulation or inspection if he has given legitimate consideration for the payment in a capacity other than his official position.

EAO-295: Whether an agency employee who uses work time to work on a lawsuit filed against the agency would be violating Section 39.02(a)(2) of the Penal Code.

Summary: An employee who used state agency work time to work on a lawsuit the employee had filed against the state would be misusing a thing of value belonging to the state.

EAO-296: Whether an officeholder may use political contributions to purchase stuffed and mounted game to display in a Capitol office.

Summary: Use of political contributions to purchase items to decorate an officeholder's Capitol office is a use connected with officeholder activities and is therefore not a violation of the personal use prohibition. Items purchased with political contributions may not be converted to personal use at the end of an officeholder's tenure in office.

EAO-303: Whether a retired judge who hears cases by assignment may use the title "Judge" in political advertising or campaign communications.

Summary: The use of the title "Judge" by a retired judge who sits by assignment does not, by itself, represent that the former judge holds an office he does not hold.

EAO-304: Whether a legislative caucus may use facilities of a public university for meetings, and whether the university may provide food, transportation, and lodging.

Summary: The commission does not have jurisdiction to determine whether a public university has either statutory or constitutional authority to provide meeting facilities, food, transportation, or lodging to a legislative caucus. There is nothing in the laws under the jurisdiction of the commission that would prohibit a legislative caucus from accepting meeting facilities, food, transportation, and lodging as an in-kind contribution from a university as long as they are not accepted during a regular legislative session or during the 30-day period before a regular legislative session. Although individual members of the legislature are subject to restrictions on the acceptance of benefits, they may accept food, transportation, and lodging as a guest of the caucus as long as they comply with any applicable reporting requirements.

EAO-305: Whether a professor at a state university may accept a fee in addition to the professor's regular salary for performing a service outside of the professor's regular job duties.

Summary: A public servant may accept an honorarium for performing services if the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

EAO-308: Whether records maintained by an officeholder in accordance with Section 254.001 of the Election Code are public records.

Summary: "Backup records" maintained by a candidate or officeholder pursuant to Section 254.001 of the Election Code are not public records under Title 15, Election Code. Whether such records are public information under Chapter 552, Government Code, is a question for the attorney general.

EAO-310: Whether an officeholder may use political contributions to pay legal expenses incurred in connection with federal and state investigations of the officeholder for public corruption.

Summary: An officeholder may use political contributions to pay legal expenses incurred in connection with federal and state investigations of the officeholder for public corruption.

EAO-312: Whether an employee of a city police department in Texas may accept a fee for performing services as an expert fingerprint examiner in a criminal case in Louisiana.

Summary: Under Section 36.07 of the Penal Code a public servant may accept an honorarium for performing services as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

EAO-313: Whether an officeholder may use political contributions to pay for property damages caused in the discharge of the officeholder's official duties. While performing his official duties, the officeholder was involved in an incident in which a man was accidentally shot and a truck was damaged. Because a grand jury determined the shooting was justified, the governmental body will not pay for damages to the truck. The officeholder wishes to use political contributions to compensate the owner of the truck.

Summary: An officeholder may use political contributions to pay for damages to property caused in the discharge of the officeholder's official duties.

EAO-319: Whether a legislator may use political contributions to pay rent and maintenance fees for a condominium in Travis County that the legislator's wife owns as separate property.

Summary: Although the personal-use restriction in Section 253.035 of the Election Code does not prohibit a legislator from using political contributions to pay his spouse fair market value for the use of the spouse's assets for officeholder purposes, it has been suggested that the payments at issue here are prohibited under Section 253.038 of the Election Code, which prohibits the use of political contributions to purchase real property or to pay the interest on or principal of a note for the purchase of real estate.

The real property in question here is the separate property of the legislator's spouse. In Texas a married person has the sole management, disposition, and control over his or her separate property.

A legislator's use of political contributions to make a rental payment to his spouse for the use of her separate property does not constitute a payment to purchase real property and does not violate Section 253.038 of the Election Code. Nor is

such a payment a conversion to personal use as long as the payment does not exceed the fair market value of the use of the property.

EAO-321: Whether a sitting judge may solicit campaign contributions using letterhead that shows his or her current judicial position if the solicitation contains a notation indicating that the solicitation was not printed at county expense and noting that it is political advertising.

Summary: Although a candidate may not suggest in political advertising and campaign communications that the candidate holds an office he or she does not hold, a candidate who is an officeholder is free to accurately identify himself or herself as the holder of a particular office.

The laws under the jurisdiction of the commission do not require that political advertising contain a disclaimer stating that the advertising was not paid for with public funds, but an officeholder may wish to include such a disclaimer to assure the public that public funds have not been used for campaign purposes.

EAO-325: Whether a lobby registrant may purchase real estate from a legislator if the lobby registrant pays fair market value for the property.

Summary: A legislator may sell a piece of real property to a registered lobbyist provided that the purchase price reflects the fair market value of the property.

EAO-326: Interpretation of the requirement that a personal financial statement filed under Chapter 572 of the Government Code contain a listing of all shares of stock held or acquired by the filer during the year covered by the statement.

Summary: On a financial statement filed under Chapter 572 of the Government Code, a filer must list the stock of any business entity held or acquired during the year covered by the report, and if the stock is sold, the filer must report the category of the amount of net gain or loss realized from the sale. If a filer owns stock in a fund that itself owns stock, the filer is required to report only the stock the filer owns, not the stock the fund owns. On the other hand, if a filer has delegated the responsibility to buy and sell stocks to an account manager but retains ownership of the stocks, the filer must report the required information about each of the stocks held or acquired during the year covered by the report.

EAO-327: Whether a corporation may make expenditures for creating and maintaining an Internet site containing photos and information relating to candidates in upcoming elections.

Summary: A corporation may make expenditures for creating and maintaining an Internet site containing photos and information relating to candidates in upcoming elections if all candidates in an election have access to the site on an equal basis and if the site is not used to support or oppose any candidate.

EAO-329: Whether a judgment rendered in favor of a prevailing candidate in a lawsuit authorized under Section 253.131 of the Election Code is “reportable activity” under Section 251.001(11) of the Election Code; whether a donation of legal services to pursue such a lawsuit is reportable.

Summary: An award of damages to a candidate in a lawsuit brought under Section 253.131 of the Election Code is not a contribution given with the intent to aid the recipient’s campaign; nor is the award of damages reportable by the recipient under any other provision of Title 15. An individual who provides free legal services to a candidate who brings a lawsuit under Section 253.131 makes a non-reportable political contribution, since the contribution of an individual’s personal service is not required to be reported.

EAO-333: Questions regarding the application of Section 572.024 of the Government Code which requires the disclosure of fees received by a state officer for services rendered to or on behalf of a person or entity the officer actually knows directly compensates or reimburses a person required to be registered as a lobbyist.

Summary: For purposes of Section 572.024 of the Government Code, a state officer “actually knows” that a client directly compensates or reimburses a person required to be registered as a lobbyist if the state officer has express information to that effect or can acquire that express information through readily available means. A fee received by a business entity from a client who directly compensates or reimburses a person required to be registered as a lobbyist is not a fee received by a state officer for purposes of Section 572.024 unless the business entity is the alter ego of the state officer.

EAO-335: Determination of the ending date for the period during which a judicial candidate may accept political contributions if the candidate was in a primary runoff and is unopposed in the November general election.

Summary: A candidate in a primary runoff and unopposed in the general election may accept political contributions during a period ending 120 days after the date of the primary runoff.

EAO-338: Application of Section 305.026 of the Government Code and Title 15 of the Election Code to a nonprofit corporation which includes various political subdivisions as dues-paying members.

Summary: Section 305.026(a) of the Government Code places restrictions on the use of political subdivision funds to compensate a person who communicates with legislative officers or employees for the purpose of influencing legislation. Those restrictions do not apply to a political subdivision's payment of dues to an organization that uses the dues to pay a registered lobbyist.

EAO-343: Whether a candidate forum to which only certain candidates are invited constitutes a communication in support of the candidates invited and whether a promise to abide by provisions in a city campaign finance ordinance is "consideration" for purposes of the definition of "political advertising."

Summary: Excluding candidates from a candidate forum makes the forum itself a communication in support of those included because the exclusion of certain candidates lends the sponsor's tacit support to those included as the candidates worthy of consideration by the audience.

EAO-347: Reporting requirements in a situation in which a candidate or officeholder uses political contributions to reimburse himself for the use of a personal vehicle for campaign or officeholder purposes.

Summary: If a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions.

EAO-354: Whether a member of the House of Representatives may rely on the exception set out in Section 253.034(c) of the Election Code if the member intends to run for the Senate in a special election that has not yet been ordered

but which will almost certainly be ordered and held during the 1997 legislative session.

Summary: A member of the House of Representatives who intends to run for the Senate in a special election that has not yet been ordered but which will almost certainly be ordered and held during the 1997 legislative session may rely on the exception set out in Section 253.034(c)(1) of the Election Code.

EAO-355: Whether an incorporated association may offer members of the legislature World Wide Web home pages and related services during the legislative session.

Summary: An incorporated association may offer members of the legislature World Wide Web home pages and related services during the legislative session if the services are donated to directly communicate with the members with the intent to influence legislative action, and are properly reported by a registered lobbyist.

EAO-356: Whether a state representative may use political contributions to pay for transportation and hotel expenses to attend the swearing-in ceremony of a United States Congressman from Texas.

Summary: Whether a member of the Texas Legislature may use political contributions to pay expenses in connection with a swearing-in ceremony for a member of the United States Congress depends on the intent with which the expenditures are made.

EAO-357: Whether a legislative caucus may continue to receive contributions of personal services during the contribution moratorium period if the agreement to provide the services was entered into before the moratorium period.

Summary: A legislative caucus must refuse contributions of personal services from nonmembers during the moratorium period imposed by Section 253.0341 of the Election Code, even if the agreement to provide the services was entered into before the start of the moratorium period.

EAO-358: Whether an employee of the Texas Legislature may be the owner of a business that provides election support services to candidates for elective office.

Summary: Whether a legislative employee may engage in outside business activity depends on the specific nature of the outside business activity. Although there is no absolute prohibition on outside employment by legislative employees in the laws interpreted by the commission, any legislative employee considering outside employment should review the provisions mentioned in this opinion to make sure that the outside employment is permissible.

EAO-359: Whether a legislator may use political contributions to pay or reimburse expenditures incurred by a staff member who maintains a residence in Austin to lease and furnish an apartment in the legislator's district.

Summary: A legislator may use political contributions to pay or reimburse expenditures incurred by a staff member who normally resides in Austin to lease and furnish a second residence in the legislator's district if the legislator has requested that the staff member spend time in the legislator's district during the legislative session to maintain contact with the legislator's constituents. In the situation described in this opinion, the legislator's payment of those expenses is not a prohibited "benefit" to the staff member.

EAO-363: Whether contributions to a legal defense fund for a member of the legislature are political contributions for purposes of Title 15 of the Election Code and whether the member of the legislature may use political contributions to pay expenses in connection with a particular lawsuit.

Summary: Contributions to a legislator for a legal defense fund to cover the expenses of defending two lawsuits brought against the legislator in a private professional capacity would not be officeholder contributions. Further, the legislator may not use political contributions on hand to pay the expenses of defending the two lawsuits in question.

The provision of legal services at no charge would be a "benefit" for purposes of Chapter 36 of the Penal Code.

EAO-366: Whether a senator's legislative aide may post information on a World Wide Web page on the Internet if the Web page is supported by political contributions and by gifts from lobbyists.

Summary: The laws governing political contributions and lobby expenditures do not limit the use of state resources for a state purpose simply because political contributions and lobby gifts are also used to support that state purpose.

EAO-370: Whether Section 572.023(11) of the Government Code, requires that certain meals be reported on Part XI of the personal financial disclosure statement form.

Summary: A person who is required to file a personal financial disclosure statement under Chapter 572 of the Government Code, and who speaks at an event that includes a meal for the speaker and the audience, is not required to report the meal on Part XI of the financial disclosure statement form.

EAO-371: Questions regarding the application of Chapter 572 of the Government Code to a legislator's representation of clients in the legislator's private legal practice.

Summary: A legislator may not represent a person for compensation before a state agency in the executive branch unless the representation (1) is made in a proceeding that is adversary in nature or in another public hearing that is a matter of record or (2) involves only ministerial acts on the part of the agency. Beginning on September 1, 1997, a legislator representing a person for compensation before a state agency will be required to disclose to the agency the fact that the legislator is receiving compensation for the representation.

A legislator who represents a person for compensation before an executive state agency must report the name of the agency, the name of the person represented, and the category of the amount of compensation on his or her personal financial statement.

EAO-372: Questions about state employees' use of state-owned cellular phones, electronic mail, and Internet services.

Summary: Section 39.02 of the Penal Code does not require state agencies to adopt policies absolutely prohibiting any personal use of telephones or computer services as long as the state is reimbursed for any direct costs incurred. In adopting policies about the use of agency equipment, agencies should make sure that any permissible personal use does not result in direct costs paid by the state and does not impede agency functions. Agency policies should also ensure that state resources are not used for private commercial purposes and that only incidental amounts of employee time—time periods comparable to reasonable coffee breaks during the day—are used to attend to personal matters.

EAO-374: Whether a member of the legislature may contract with local public housing authorities.

Summary: A legislator should not engage in business activities that create a conflict or the appearance of a conflict between the legislator's responsibilities as a public servant and the legislator's private contractual obligations.

Although the laws interpreted by the commission do not contain a general prohibition against legislators contracting to provide services for public housing authorities, certain provisions in the Penal Code and in Chapter 572 of the Government Code might prohibit such a contract in some circumstances.

EAO-375: Whether a candidate or officeholder may reimburse himself with interest for political expenditures made from personal funds.

Summary: A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candidate's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on the report that he or she intends to pay reimbursement with interest. The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest.

EAO-376: Whether a candidate may use political advertising materials left over from a previous campaign in an upcoming campaign for the same office.

Summary: If the information in a political advertising disclosure statement was correct when the political advertising was printed or published, the political advertising complies with Section 255.001 of the Election Code.

A campaign communication supporting an individual who is not an incumbent in the office sought does not comply with Section 255.006(b) of the Election Code, if it identifies the office sought but does not use the word "for."

EAO-378: Whether a legislator may use political contributions to pay expenses incurred by the legislator's spouse in attending the opening ceremony of the legislative session, Legislative Ladies functions, or legislative conferences.

Summary: A newly elected or re-elected legislator may use political contributions

to pay travel expenses for his or her spouse to attend the opening ceremony of the legislature.

A legislator may not use political contributions to pay expenses associated with the attendance of the legislator's spouse at Legislative Ladies functions.

A member of the legislature may not use political contributions to pay for his or her spouse to attend a legislative conference if the spouse is attending merely to participate in social activities provided for spouses. A member of the legislature may use political contributions to pay for his or her spouse to attend a legislative conference if the spouse attends the conference to participate in the substantive programs offered at the conference in order to assist the legislator in the performance of legislative duties or activities.

EAO-380: Whether an envelope used to send political advertising must bear the disclosure information required by Section 255.001 of the Election Code.

Summary: The disclosure information required by Section 255.001 of the Election Code is not required on an envelope that is used to transmit political advertising provided that the political advertising in the envelope complies with the requirements of Section 255.001 of the Election Code.

EAO-385: Whether a particular campaign brochure violates Section 255.006 of the Election Code.

Summary: The brochure in question here is a campaign communication supporting a candidate who is not an incumbent in the office sought. See Section 251.001(17) (defining campaign communication), Election Code. The campaign communication states the name of the office sought a number of times, but in only two of those instances does the word "for" appear in conjunction with the name of the office. Because the candidate makes the representations in the campaign materials each time he distributes them, the issue here is whether the distribution of the brochures after September 1, 1997, is in violation of Section 255.006(c) of the Election Code. See EAO-376 (1997) (regarding the meaning of "represent").

In our opinion, the brochure in question is in compliance with Section 255.006(c) of the Election Code. Although the word "for" does not appear in every instance in which the candidate's name is linked to the office sought, we find the two instances in which it does occur sufficient to satisfy the requirement in Section

255.006(c). [Although we find that the brochure in question satisfies Section 255.006, we recommend the cautious practice of using the word “for” in any instance in which a non-incumbent candidate’s name is linked to the office sought.]

EAO-386: Whether an officeholder may use a state-owned computer to electronically file campaign finance reports with the commission.

Summary: The use of state computers or personnel to prepare campaign reports for officeholders would be a misuse of government property.

EAO-387: Whether Section 255.001 of the Election Code requires that a political advertising disclosure statement be placed on wooden nickels printed with a candidate’s political logo.

Summary: In EAO-184 (1994), we determined that items such as magnets and emery boards are campaign materials similar to the campaign buttons and pins expressly exempted from the requirements of Section 255.001 of the Election Code and so are not required to carry a disclosure statement. In the present case, we make the same determination as to wooden nickels printed with political advertising.

EAO-390: Whether balloons must contain the disclosure statement required by Section 255.001 of the Election Code, and whether a candidate must report the use of campaign materials left over from a previous campaign.

Summary: Campaign balloons are not required to contain the disclosure statement described in Section 255.001 of the Election Code.

A candidate is not required to report the use in a current campaign of materials paid for and reported in connection with a previous campaign.

EAO-392: Personal financial disclosure statement reporting requirements in regard to retirement income and property descriptions.

Summary: Income received as a pension or from a retirement plan associated with past occupational activity is not required to be reported as a “source of occupational income” on a personal financial disclosure statement. Information about retirement funds or income may, however, be reportable under some other category on the personal financial disclosure statement.

In describing real property on a personal financial disclosure statement, providing a street address and the city, county, and state where the real property is located is an adequate alternative to providing the name of the county where the real property is located and the number of lots or acres.

EAO-395: Whether a state employee may use a state-owned telephone to make a personal long-distance telephone call if no charge is incurred by the state.

Summary: A state employee's incidental use of state telephones to place long-distance personal calls is not a misapplication of government resources as long as the calls do not result in any charges to the state.

EAO-401: Whether Section 572.023(b)(11) of the Government Code requires an officeholder to report expenses paid in connection with a trip to make a speech to assist a candidate.

Summary: A state officer is not required to report the provision of transportation, meals, and lodging in connection with a campaign speech for someone else under Section 572.023(b)(11) of the Government Code, if the candidate on whose behalf the state officer makes the campaign speech is required to report the expenditures on a campaign finance report.

EAO-405: Whether “a public officeholder, who desires to improve his reputation among voters that he believes in family values, may use campaign funds to pay for him and his family to attend public events.”

Summary: In previous opinions, we have stated that a candidate or officeholder may not use political contributions to pay for family members to attend social events. Even if a candidate reaps a campaign benefit by engaging in typical family activities, those activities cannot be characterized as duties or activities “as a candidate.” Presumably a spouse or parent would be engaging in recreational activities with family members regardless of whether he or she was running for office.

A candidate or officeholder may not use political contributions to pay for family recreation or entertainment.

EAO-407: Whether a legislator may use political contributions to rent a tuxedo

for the legislative gala on the eve of the first day of a regular legislative session or for a nonprofit charity function.

Summary: An officeholder may use political contributions to pay clothing expenses if the clothing: (1) is of a type appropriate for the performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn. In our opinion, the rental of a tuxedo for the legislative gala satisfies that standard. The legislative gala is in connection with legislative activities and apparently it is common practice for male legislators to wear tuxedos to the event. Further, a tuxedo, unlike a business suit, is for most people not adaptable to general usage as ordinary clothing. Finally, the fact that the legislator is renting the tuxedo indicates that this particular tuxedo will not be so worn. We conclude therefore that a legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session.

Similarly, a legislator may use political contributions to rent a tuxedo for attendance at a charity event as long as the legislator is attending the event as an activity of a public officeholder.

EAO-408: Regarding private employment by members of the legislature.

Summary: A legislator is not subject to a general prohibition on employment by a law firm or by an accounting and investment firm as long as the legislator is performing the work in a capacity other than as a legislator and as long as the legislator's compensation reflects the actual value of the work performed. Specific circumstances could arise, however, in which such employment might not be in keeping with the standards of conduct in Section 572.051 of the Government Code.

EAO-409: Regarding a general-purpose political committee.

Summary: A general-purpose political committee may accept corporate contributions earmarked for a scholarship fund as long as the committee's expenditures in connection with the scholarship fund are not made in connection with a campaign for elective office or on a measure or for officeholder purposes.

EAO-411: Regarding moratorium periods for legislative members.

Summary: A member of the legislature may not take receipt of a check during the moratorium period set out in Section 253.034 (a) of the Election Code, in a situation in which the check is intended to replace an invalid check that was delivered before the moratorium began.

EAO-415: Whether an officeholder is required to report a reception in the officeholder's honor as a gift on his personal financial disclosure statement.

Summary: A reception to honor a state officer is a "gift" for purposes of Section 572.023(b)(7) of the Government Code and is reportable on the state officer's personal financial statement unless an exception is provided by Section 572.023(b)(7).

EAO-421: Whether ethics laws apply to gifts given by a lobbyist to a legislator's child on an occasion such as a birthday, quinceañera, bar or bat mitzvah, or a christening.

Summary: A member of the legislature may not solicit or accept a gift for his or her child unless one of the exceptions in Section 36.10 of the Penal Code applies to the gift. A member of the legislature may not solicit or accept a gift for his or her child from a lobbyist unless the gift is permissible both under Chapter 36 of the Penal Code and under Chapter 305 of the Government Code.

EAO-422: Whether a candidate may appoint his daughter as his campaign treasurer.

Summary: A candidate may appoint any individual as his or her campaign treasurer, including a minor. This rule does not apply to the campaign treasurer of a political committee.

EAO-428: Regarding whether a legislator is subject to any reporting requirements or restrictions in connection with gifts and invitations to the legislator's child.

Summary: The expenditure reporting requirements in Chapter 305 of the Government Code law apply only to expenditures made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

The expenditure restrictions in Chapter 305 of the Government Code apply regardless of whether the expenditure is made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

EAO-430: Relating to the permissibility of using political contributions to pay a portion of the purchase price of a car as well as a portion of other expenses incurred in operating and maintaining the car.

Summary: A candidate or officeholder may use political contributions to make expenditures to purchase, operate, and maintain an asset with a combination of political contributions and personal funds, but political contributions may not be used to pay any costs attributable to personal use of the asset.

EAO-432: Regarding political contributions and their purposes.

Summary: A candidate or officeholder may not use political contributions to pay a license fee unless the license is required for the office held or sought.

EAO-434: Regarding political contributions and their purposes.

Summary: A candidate may use political contributions to pay a niece or nephew for campaign work in a situation in which the amount of compensation is based on the fair market value of the work performed.

EAO-435: Regarding political advertising.

Summary: Political advertising in the form of a business card must include the information required by Section 255.001 (a) of the Election Code.

EAO-436: Regarding political contributions and candidates for the speaker of the house.

Summary: A member of the Texas Legislature may not use political contributions to make a contribution to a speaker candidate unless the member is able to demonstrate that the member obtained the funds from a source that is permitted to make contributions to a speaker candidate.

EAO-437: Regarding the use of surplus political contributions by a former state officeholder to make contributions to political party organizations.

Summary: A former state officeholder may contribute unexpended political contributions to any generally recognized affiliate of the political party with which the former state officeholder was affiliated when his name was last on the ballot.

EAO-440: Regarding the application of Section 572.057 of the Government Code to a building owned in part by a legislator. The commission was asked to determine whether a legislator can divide ownership in an office building so that he or she owns approximately one-half of the building and another individual owns the other half of the building, and then have his or her legislative office in a portion of the half of the building which is owned by the other person, and thereby receive an appropriate lease payment from the State to reasonably compensate for the space required to house the legislative function.

Summary: The commission held that it has no authority to issue an opinion about the legal effect of a private real estate transaction.

EAO-441: Regarding certain prohibitions for state employment.

Summary: There is nothing in the statutes under the commission's jurisdiction that would prohibit a state employee from participating in an employment interview. (The opinion states that the remaining questions presented cannot be resolved without a consideration of all relevant facts.)

EAO-442: Regarding certain requirements that must be used in campaign materials.

Summary: Section 255.006(c) of the Election Code requires the use of the word "for" in certain campaign materials to clarify that the candidate does not occupy the office sought. The political advertising at issue in this opinion does not comply with Section 255.006(c).

EAO-446: Regarding interpretation of the term "particular matter" for purposes of the revolving door provision in Section 527.054(b), Government Code.

Summary: This opinion considers the meaning of the term "particular matter" for purposes of the revolving door provision in Section 527.054(b), Government Code, in a situation in which a state agency and a private entity entered into a contract for services that provided for a three-year term and gave the agency the option to extend the contract for a fourth year. In our opinion, the entire

four-year period is part of the same matter for purposes of the revolving door provision in Section 572.054(b), Government Code.

EAO-447: Regarding the scope of the “solicitable class” of a nonprofit corporation whose members include limited liability companies, partnerships, and sole proprietorships.

Summary: If a stockholder or member of a corporation is a business entity not subject to the restrictions in Section 253.094, Election Code, the corporation’s solicitable class under Section 253.100(b), Election Code, does not include the owners or employees of the business entity or the families of the owners or employees.

EAO-448: Regarding whether a particular lawsuit is an “election contest” for purposes of the provision in the Election Code that allows a member of the legislature to accept political contributions during the moratorium period provided for in Section 253.034, Election Code.

Summary: The lawsuit described in this opinion is an election contest for purposes of the provision in Section 253.034(c)(2), Election Code.

EAO-450: Regarding applicable reporting requirements in a situation in which a member of a candidate’s campaign staff makes a campaign expenditure and later receives reimbursement from the candidate.

Summary: If a candidate’s campaign worker makes a campaign expenditure out of personal funds and receives reimbursement from the candidate in the same reporting period, it is permissible to report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the campaign worker made the expenditure, and explaining in the “purpose” section that a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker.

EAO-453: Regarding whether a former member of the Texas Legislature may use unexpended political contributions to make expenditures in connection with the position of U.S. ambassador.

Summary: A former state senator may use political contributions accepted as a Texas candidate or officeholder for entertainment purposes in connection with the position of U.S. ambassador to a foreign country.

EAO-454: Regarding whether the laws under the jurisdiction of the Texas Ethics Commission limit the circumstances in which a lawyer who is a member of the legislature may refer to his legislative service in connection with his private legal practice.

Summary: There is nothing in the laws under the jurisdiction of the commission that specifically addresses the issues of whether and when a legislator may mention his legislative service. Although it is conceivable that a legislator might refer to his legislative service in a context that raised questions about Section 36.02, 36.07, or 36.08(f) of the Penal Code, a reference to legislative service, without more, would not constitute a violation of one of those provisions.

EAO-455: Regarding whether the contingent fee prohibition in Section 305.022 of the Government Code applies in a situation in which a lawyer seeks a legislative change that may increase the lawyer's chances of success in tax refund cases.

Summary: The compensation described in this opinion is not contingent on the passage of legislation.

EAO-457: Regarding whether section 255.001 of the Election Code requires that a political advertising disclosure statement be included on shirts that bear a candidate's political logo.

Summary: A shirt that bears a candidate's political logo is not required to include a political advertising disclosure statement.

EAO-458: Regarding whether a former member of the Texas Legislature may use unexpended political contributions to make expenditures in connection with the position of U.S. ambassador.

Summary: A former state senator who is now a U.S. ambassador may use political contributions accepted as a Texas candidate or officeholder to purchase furnishings for use in his official residence and to host an evening of holiday entertainment for embassy staff members and their families.

EAO-460: Regarding the meaning of the phrase "reimbursable with public funds" in section 251.001(9) of the Election Code.

Summary: Expenditures for tickets are not "reimbursable with public funds" in

a situation in which the payor chooses to make the expenditures rather than to use a free pass issued by a government body.

EAO-461: Whether a legislator who is a lawyer may be employed by a law firm that represents clients before a state agency.

Summary: There is nothing in the laws subject to interpretation by the commission that prohibits a legislator from being employed by a firm simply because other members of the firm represent clients before state agencies.

EAO-462: Whether a former elected statewide officeholder may use unexpended political contributions to make expenditures in connection with his current non-elected position at a state agency.

Summary: A former elected statewide officeholder may use unexpended political contributions to make expenditures in connection with his current non-elected position at a state agency.

EAO-464: Whether a legislative advertising disclosure statement is required to be included on segments of radio broadcasts and on articles that are available on a website and that are included in an e-mail newsletter.

Summary: A radio segment supporting or opposing legislation that is part of a communication that is broadcast in return for consideration must include a legislative advertising disclosure statement. Articles supporting or opposing legislation that appear on a website or that are made by e-mail are not required to include a legislative advertising disclosure statement.

EAO-465: Whether a non-judicial officeholder who is seeking a judicial office is required to file a single campaign finance report combining both non-judicial and judicial activity.

Summary: A non-judicial officeholder who becomes a judicial candidate is required to file two campaign finance reports, one reporting non-judicial activity and the other reporting judicial activity. Alternatively, a non-judicial officeholder who becomes a judicial candidate may select to file one report if: (1) in the description of an expenditure states whether an expenditure is for non-judicial activity, and (2) the total contributions maintained at the end of the reporting period states the amount attributed to non-judicial contributions and the amount attributed to judicial contributions.

EAO-466: Personal financial disclosure statement reporting requirements in regard to making or receiving a referral for compensation for legal services.

Summary: The commission will recommend that the legislature clarify section 572.0252 of the Government Code because this statute is so vague as to be unenforceable.

EAO-467: Whether certain corporate expenditures for a lobbyist to attend a political fundraiser golf tournament are permissible.

Summary: The lobby law does not prohibit a corporation from making the expenditures for a lobbyist's own transportation, lobbyist lodging, and food and beverages to attend a political fundraiser. If the expenditures were not made with the intent that they be used in connection with a campaign for an elective office or made with the intent to assist an elective officeholder, they are not regulated by title 15 of the Election Code. A corporation may not pay a lobbyist's entry fee to the golf tournament. The fact that the corporate employee while on corporate time makes the expenditures instead of the corporation making the expenditures does not change the result to the questions discussed above.

EAO-468: Whether corporate expenditures "for minimal time spent by a corporate employee to deliver a committee check in person at a local campaign event held in the same locale as the employee lives and during normal working hours" are permissible.

Summary: An expenditure made by a corporation to deliver a political contribution in the form of a check from a general-purpose political committee to a candidate would constitute an administrative expenditure if the delivery originates and is completed in the state of Texas.

EAO-471: Whether an incorporated statewide organization may invite elected officials to address the organization's membership.

Summary: Whether the provision of an opportunity to address a corporation's membership constitutes a political contribution depends on the intent with which the opportunity is provided. Intent is determined by facts, including the level of involvement of the officeholder to whom the opportunity is provided.

EAO-473: Whether the description of a gift of cash of over \$250 is required to include the value of the gift.

Summary: The description of a gift of cash or cash equivalent that is reportable under section 572.023(b)(7) of the Government Code is not required to include the value of the gift.

EAO-474: Whether certain conduct constitutes legislative bribery and whether there is a duty to report such conduct.

Summary: Whether the conduct described in the request letter constitutes legislative bribery under chapter 302 of the Government Code depends on all the relevant facts. It is never the commission's role in opinions to resolve fact issues.

EAO-479: Whether a general-purpose political committee may ask a candidate for the House of Representatives questions concerning candidates for speaker of the House of Representatives and whether the committee may base its decision to support or not to support the candidate for the House of Representatives on the responses to those questions.

Summary: Placing a candidate on notice that a general-purpose committee will base its decision on whether or not to support the candidate on the candidate's responses to the specific questions listed above would constitute legislative bribery under Section 302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues.

The legal value of an EAO is to provide a defense to prosecution for activities that, in the opinion of the commission, are not in violation of the laws under the jurisdiction of the commission. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

EAO-481: Whether a candidate for speaker of the House of Representatives may expend campaign funds to employ the services of a professional fundraiser.

Summary: A candidate for speaker of the House of Representatives may expend campaign funds to employ the services of a professional fundraiser provided that the services and additional funds raised are used only for the candidate's campaign for speaker in accordance with Chapter 302 of the Government Code.

EAO-482: Whether the expenditure restrictions for transportation and lodging in Chapter 305 of the Government Code apply in a situation in which prepayment is made for the transportation and lodging.

Summary: The provision of transportation and lodging does not constitute an expenditure for purposes of Chapter 305 of the Government Code if prepayment in full is made by the recipient to the person providing the transportation and lodging. The fair market value is the standard for determining the amount of prepayment and any reasonable method for determining the fair market value must factor in the value of equivalent transportation and lodging in an arm's length transaction.